

**GUNS AND GUN CONTROL IN SOUTH AFRICA:**

**A Case Study of Fatal Gun Use  
in Metropolitan Cape Town, 1984-1991,  
with a Critical Examination of Broader Issues**

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## ABSTRACT

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Since the election of the new government in South Africa in 1994, a process of reconstructing and prioritising social problems has been underway in which firearms have been afforded prominence. A 'gun problem' has been constructed based on the traditional premise that illegal private possession is the issue and most interventions have targeted the reduction of unlicensed guns. However, despite more than 35 years of research worldwide, this foundational premise lacks empirical support. Moreover relevant work on South Africa has been scarce. Utilising this as the basic assumption of a contemporary conception of the 'gun problem' would thus seem unwise. Hence an alternate approach was adopted, starting with the question of *whether* guns were actually problematic in this context. A case study was conducted using a complete sample (1555) of fatal shootings in metropolitan Cape Town from 1984 to 1991. The overall aim was to paint a comprehensive picture of lethal gun use that would enable the identification and prioritising of problems, and the shaping of interventions. A pencil-and-paper device was constructed to extract information from mortuary registers, inquest and criminal court records. Variables included characteristics of victims, shooters, circumstances, weapons, injuries, and the legal process. Specific attention was paid to restraint in homicides; various indicators were used to measure levels of minimum force and proportionality. The data were transferred into a customised computer database for analysis. Statistical significance was assessed using chi-square tests and the analysis of standardised residuals for selected single and cross-tabulated variables. A range of problems were revealed that varied across gun accidents, suicides and homicides, and implied a multifaceted intervention strategy. However, gun homicides were the principal problem: a ratio of one accident to 25 suicides to 94 homicides. More specifically, police, private security and civilian shooters used licensed and unlicensed guns with a marked lack of restraint whether their purposes were lawful or criminal, and irrespective of the situation -- political conflict, everyday circumstances, public order policing or general law enforcement. The majority also violated the principles of minimum force and proportionality. Even licensed guns employed lawfully, were used too readily and the result was unnecessary loss of life. Contrary to conventional notions lawful users, particularly the police and private security officers, were shown to be a major part of the 'gun problem'. Notably, a poor quality of police evidence was revealed as a key impediment, along with lax application of legal provisions on restraint by inquest courts, and a low probability of criminal sanction for unlawful killing, with some indication of undue leniency in the treatment of police shooters. At a policy level emphasis was placed on continuing to address macro-level factors fueling social conflict, improving public confidence in the institutions of collective security and education to change attitudes to violence. A co-ordinating body was recommended to oversee planning, implementation and monitoring of a firearm strategy. Promoting empirical research and developing data sources, especially a national computerised database, were underscored. Specific interventions were proposed to reduce gun homicides comprising a combination of rule tightening, expanding less-than-lethal alternatives and training in safety and violence-reduction techniques based on the sequential decision-making and use-of-force-options models proposed by Scharf and Binder (1983), and Graves and Connnor (1992).

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*Desirée Hansson*

## CHAPTER ONE

### A DIRECTION POINTER

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Guns have been afforded priority as a distinct social problem in many Western countries since the sixties and internationally a major field of research has been developed on the topic. In societies like the USA, where firearm possession and violence have been prevalent, empirical investigation has flourished and powerful non-government organisations (NGOs) have emerged -- some aimed at reducing civilian gun possession, others at opposing additional restrictions -- which have fueled ongoing public controversy. Canada appears to have been more successful than many other nations at reducing private gun ownership and firearm-related violence. It is also one of the few countries in which gun-related policy initiatives have consistently been shaped according to research findings; by using empirical data to identify specific problems relating to firearms and to clarify targets for intervention.<sup>1</sup>

This dissertation is about the use and abuse of firearms in South Africa, with a specific focus on the fatal use of guns by civilians, police and private security officers (PSOs) in the large metropolitan area of Cape Town, from the beginning of the civil war over Apartheid in 1984 to 1991 and the transition to democracy. Rather than beginning from an assumed problem, as has generally been the practice in this field, the starting point was the question of *whether* guns were problematic. Firearms are abundant in South Africa and the mortality rate due to violence has been high, especially in the last two decades (The MRC, 1995; Bradshaw *et al*, 1984). Private gun ownership is an established tradition among whites and a rapidly growing practice among black people (The Sunday Independent, 6 October 1996). It has long been customary for the police to be armed with firearms and today a substantial number of PSOs also routinely carry guns. Despite these characteristics, it is only recently that firearms have been treated as a key social problem in this country. For almost 50 years the previous Nationalist government did not afford the issue political priority and funding for research in this field was scarce. Prior to the nineties public debate over gun control was torpid compared to the controversies that have raged in countries like the USA and Canada. Until 1994 there was no nationally organised lobby for gun control and very little empirical work had been conducted on firearm use or possession. However, this situation changed rapidly after February 1990 when the transition to democracy and the dismantling of the system of Apartheid were formally announced. As the objective of peace was

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1 See The Department of Justice for Canada (1994); Sproule and Kennett (1989); The Canadian Solicitor General (1983) and Stenning and Moyer (1981).

gradually embraced, calls for the reduction of violence multiplied and these included demands to diminish firearm-related death and injury. Unfortunately there was very little reliable research data on guns available to assist policy development.

Indeed, the first sizable empirical investigation of gun use by civilians and police in a South African context was published in late 1990 (Hansson, 1990). This work, entitled: "Firearms Used with Deadly Effect: A Study of South African Law and Practice", was based on an almost complete sample of fatal shootings in metropolitan Cape Town from 1984 to 1986. The method used -- secondary analysis of mortuary and court records -- was a novel way of overcoming the scarcity of accessible and relevant data on firearms at this time. It also proved to be an effective means of investigating gun use: the data collection procedure was viable and yielded a range of useful findings. Most notably, the study pointed to a lack of *restraint* in the use of firearms as a core problem.

The decade between 1984 and 1994 saw the outbreak and resolution of a civil war between the Apartheid State, its supporters and the Anti-Apartheid liberation movement in South Africa. Major sociopolitical changes occurred after the mid-eighties and by the time that Hansson's findings on firearm use in the first three years of the civil war were published in 1990, the negotiated settlement of the conflict was already in the pipeline. Since updated research was clearly warranted, in 1991 the author initiated a follow-up investigation of the period after 1986. Hansson's 1990 study was utilised as a pilot and after critical appraisal the main shortcomings were identified and addressed. Arguably, the most serious flaw revealed was an inadvertent bias in the original sample in favour of more serious Supreme Court cases because fatal shootings tried in the lower Regional Magistrates' Courts had been excluded. This deficit was rectified by tracing cases to conclusion in Inquest, Regional Magistrates' and Supreme Courts.<sup>2</sup> The procedure for collecting data was reviewed and streamlined. In particular the data collection device was redrafted and used to construct a customised computer database for storage and analysis. In this process some of the variables were modified, some were replaced and a number were added.<sup>3</sup> Wherever feasible, variables with unacceptably high levels of missing data were redefined. Three new composite measures of proportionality were introduced; reflecting the defence-of-life and protection-of-life standards and the principle of not foreseeably endangering third parties. Overall, the aim was to include a wider range of more reliable and valid variables. Given the changes in the research parameters, the data for fatal shootings that occurred between 1984 and 1986 were collected *anew* using the revised instrument and analysed along with the later cases (1987 to 1991). Finally, a more intensive analysis of the data was conducted; instead of mere counts and single

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2    Wherever feasible.

3    See Appendix A.

variable analysis, cross-tabulations were carried out and the statistical significance of the findings was assessed.<sup>4</sup> Preliminary results from this inquiry were first reported in a research paper produced for the Human Sciences Research Council (HSRC) in 1996 and entitled: "Firearms Used with Deadly Effect -- Part II: An Empirical Investigation of Firearm Fatalities in Metropolitan Cape Town over the period 1984 to 1991" (Hansson, 1996). However, these results were limited to frequency counts and percentages for single variables *prior* to statistical testing. It should be noted that the data presented in Chapters Seven and Eight of this dissertation were the product of different analyses, and therefore vary in important respects from the preliminary findings.

The new multiracial government, which was democratically elected in April 1994, has implemented a process of reconstruction and development that is profoundly changing South African society. Despite the many reforms and contrary to what was hoped, thus far the post-election years have been characterised by ongoing violence and rising rates of crime. Fear of violent crime and concerns about personal safety are rampant. Public confidence in the institutions of collective security, which was shattered under Apartheid, has not yet recovered and restructuring initiatives have tended to disrupt the functioning of State agencies (The Inter-Departmental Strategy Team, 1996[a], 1996[b]). In such a context it is hardly surprising that private gun ownership, legal and illegal, has spiralled upwards and that there appears to be strong opposition to additional curbs on civilian possession.<sup>5</sup> Notably, this period has seen the construction of illegal possession and firearm crime into a specific and pressing social problem. At the end of 1994 the Gun Free South Africa Campaign (GFSA) emerged; a national organisation which has subsequently been developed into a politically influential prohibitionist lobby. As expected, this has been met by a backlash from anti-prohibitionist groups and a public controversy over civilian possession is in the making. Since 1996 the National Crime Prevention Strategy (NCPS) has been addressing firearm-related crime as a priority and a range of interventions have been introduced to this end (The Inter-Departmental Strategy Team, 1996[b]).<sup>6</sup> Hence, the systematic investigation of firearm-related issues has become even more relevant since 1991 when this research was first envisaged. As the current period seems to constitute a window of opportunity for clarifying, prioritising and addressing social problems, the work presented here is intended as a contribution to the emergent dominant discourse on guns and related policy in South Africa.

The subsequent text was constructed around the following frame of objectives: first to critically review pertinent overseas research in order to extract lessons that

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4 See Chapter Six for procedural details.

5 Understandably Africans have been opposed having only recently been afforded equal access to private gun ownership.

6 See Table 10.2.



might be relevant within the South African context. Hence, the next four chapters comprise a review of the literature: Chapter Two deals with key work on civilians in relation to guns in other countries, and Chapter Four addresses this topic with regard to police.<sup>7</sup> The second objective was to evaluate literature on firearms in South Africa (SA) and to gather and compile previously fragmented statistics of relevance: civilians and guns in this country thus constitute the focus of Chapter Three and, in Chapter Five this subject has been addressed in relation to the erstwhile South African Police force (SAP). The third objective was to contribute a new set of empirical findings (see Chapters Seven, Eight and Nine), and then to synthesise the information in the light of recent changes, clarify gun-related problems and suggest feasible interventions (see Chapters Nine and Ten).

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7 North American work dominates because it constitutes the majority of the research in this field.

## CHAPTER TWO

### LITERATURE REVIEW PART I:

#### A Critical Overview of Key Work on Civilians and Guns

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### INTRODUCTION AND BACKGROUND

During the last three to four decades a plethora of research has been conducted on the subject of firearms and, more specifically, on how to control the possession and use of these weapons (Hawley, 1993). Whilst the bulk of work on civilians<sup>1</sup> and guns has been carried out in the USA, the issue has been treated as a significant contemporary social problem in a wide range of countries, particularly Australia,<sup>2</sup> Canada,<sup>3</sup> the Netherlands,<sup>4</sup> and the United Kingdom (UK).<sup>5</sup> This chapter comprises a critical evaluation of the key academic literature available on the topic of civilians and guns worldwide,<sup>6</sup> although most of this work pertains to the USA. Literature concerning South Africa has been discussed separately in Chapter Three.

In the sixties, North America was characterised by heightened political protest and many demonstrations culminated in violent confrontations between civilians and police.<sup>7</sup> The high public visibility of this conflict fuelled popular concern over violence which was gradually shifted onto the issue of crime. The federal government's National Commission on the Causes and Prevention of Violence was particularly influential in linking this social problem to the issue of guns.<sup>8</sup> In 1971 this Commission concluded publicly that guns were the leading cause of violent crime in the USA and recommended reducing the availability of firearms, particularly handguns (Toch & Lizotte, 1992; Zimring, 1985). It also called for the development of policy to decrease handgun accessibility and the number of privately owned firearms. Substantial government funding for research in this field boosted policy-oriented work and studies of firearm violence. For this reason 1971 has been noted as the watershed for the development of research on civilians and guns in North America (Toch & Lizotte, 1992; Zimring, 1985). Since then the study of this topic has grown into a major research field in academia, mainly in the disciplines of law, medicine and the social sciences. Work has spanned gun ownership and use in

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1 The term civilians has been used to distinguish those who are not police officers or members of the defence forces, however, it includes PSOs.

2 See Chappell (1992), Neal (1989), Chappell *et al* (1988) and Forster (1984).

3 See The Department of Justice for Canada (1994), The Editor (1987, 1985) and Stenning and Moyer (1981).

4 See Roest (1989[a], 1989[b]), Colijn *et al* (1985) and Slothouwer (1985).

5 See The Mail on Sunday (27 August 1997), The Daily Mail (12 June 1997), Reuters (16 October 1996), Chapman and Milroy (1992) and Burton, 1990.

6 Mainly in English.

7 Particularly civil rights protests for racial equality and anti-war demonstrations.

8 Established in the wake of the Kennedy and King assassinations.

relation to law, culture and social structure (Hawley, 1993).

The National Commission's recommendation to reduce private gun ownership ignited public dispute over gun control which developed into a divisive political polemic of substantial magnitude (Green, 1987). A powerful political movement has been built around the issue of civilian gun possession and many believe that the debate has now reached an impasse (Robin, 1991). Whilst there is a continuum of public opinion with regard to gun control, there are two distinct opposing 'camps'. On one side there are those who would permit the majority of law abiding adults to lawfully possess firearms, with gun ownership prohibited among non-adults and those prone to violence including offenders, the mentally ill and substance abusers. This kind of regulation has been common in most Western countries for many years.<sup>9</sup> By contrast, those on the opposing side of the gun-control-continuum would completely prohibit private firearm ownership.<sup>10</sup> Therefore, the North American gun-control-controversy is not actually a dispute about whether the possession and use of guns by civilians should be regulated, but rather dissension over the *degree* to which gun possession should be restricted.<sup>11</sup> Hence, the popular terms pro- and anti-gun control are misnomers; it being more accurate to speak of those who favour greater or lesser gun control, since the majority on both sides of the debate tend to agree that certain civilians should be prohibited from legally possessing firearms. For the purposes of this discussion, those who would outlaw private gun ownership have been termed prohibitionists, and those who oppose complete prohibition have been termed anti-prohibitionists.

It is noteworthy that key issues in the public controversy on gun control are reflected in academic discourse on the topic (Hawley, 1993). In fact political concerns have, to a significant extent, set the agenda for research in this field. The following literature review is, in effect, an evaluation of the research evidence on the main claims and counter-claims comprising the gun-control-controversy.

## **A CRITICAL EXAMINATION OF RESEARCH EVIDENCE**

### **The Lethality Issue**

Firearms have been viewed as a prime cause of violent death, mainly because they are considered to be the most lethal type of weapon commonly available to civilians (e.g. Chappell *et al*, 1988). Although more people are generally assaulted with other weapons, firearms are more likely to cause death (e.g. Turner & Leyens, 1992; Neal, 1989).<sup>12</sup> It has been shown that gun assaults are five times more likely to kill than knife attacks (Turner & Leyens, 1992). In the USA over the past two decades, gunshots have caused twice as many deaths as knives, although firearm

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9 Like Britain, Austria, Denmark, France, Germany and Italy.

10 Or at least handguns, e.g. Australia, Canada, the Netherlands and Greece.

11 See Nisbet (1990) on the US debate.

12 Except explosives.

assaults have been half as common as attacks with knives (The Uniform Crime Reports 1970-1989 cited in: Turner & Leyens, 1992:206). The greater lethality of firearms -- also termed the "assault intensifying effect" -- is arguably the most basic premise undergirding the hypothesised relationship between gun prevalence and heightened violence (Kleck, 1986[a]:36). It has been argued that fatalities from suicides, accidents and homicides would be reduced if the number of privately owned guns were decreased (e.g. Polsby, 1986). Succinctly put, "[f]ewer guns would mean fewer deaths" (Zimring & Hawkins, 1987:197).

### **Gun Prevalence and Suicide**

In 1986, the USA had the fifth highest suicide rate in the world and the top *firearm* suicide rate of eight per 100000 p.a. (The World Health Organisation in: Time Magazine, 17 July, 1989:61). More than half of the 30000 gun deaths in North America were suicides, 43% resulted from homicides and only two per cent from accidents (Turner & Leyens, 1992:201). Guns are among the most lethal suicide methods providing a quick, simple and relatively certain means of ending one's life (Newton & Zimring, 1970). It has been estimated that just over three-quarters of those who attempt suicide with a gun actually die. However, the mortality rate for attempted suicide with a gun is similar to that for suicide methods like hanging, drowning and carbon-monoxide poisoning, that are commonly substituted in the absence of guns (Kleck, 1998).

It is crucial that research aimed at assessing the impact of gun prevalence on the suicide rate be designed to check for a *substitution* effect, namely, the degree to which people resort to alternate suicide methods when access to guns is restricted. Testing for this effect requires that both the overall suicide rate and the rate of gun suicide be examined. If both rates show equivalent decreases, then there is no significant substitution effect. The accumulated findings for the USA and most European countries support a strong substitution effect (e.g. Lester, 1991[b], 1988[a], 1988[b], 1987[b]; Killias, 1990; Lester & Frank, 1990; Rich, 1990). In short, if guns are not available people intent on suicide tend to substitute other methods.

However, decreasing the availability of guns generally reduces the rate of gun suicide. For instance, there is evidence of lower rates of firearm suicide following the outlawing of gun possession by the mentally ill, and the implementation of laws requiring firearm dealers to be licensed at federal, state and local levels (Sommers, 1984, 1980; Blose & Cook, 1980). The rationale in the latter instance is that the cost and hassle of extra licensing requirements reduces the number of dealers, which in turn decreases the accessibility of firearms, so deterring those who decide on impulse to buy guns to commit suicide. Several studies spanning the USA and Canada have shown significant decreases in gun suicide rates, following the

introduction of laws designed to reduce legal access to handguns (e.g. Hung, 1993; Leenaars & Lester, 1993; Mundt, 1993, 1990; Loftin *et al*, 1991; Boor & Bair, 1990). The studies of Kellerman *et al* (1992) and Brent *et al* (1991), are worthy of particular note in this regard: According to the former investigation, the presence of a gun in a home increased the risk of firearm suicide *fivefold* (Kellerman *et al*, 1992:469). Similarly, the latter study showed that the risk of gun suicide among adolescents was raised *threefold* by the presence of a firearm in the home, irrespective of the type of gun or whether the weapon was locked away (Brent *et al*, 1991:2989). To conclude, the accumulated evidence supports a significant substitution effect, and a positive association between gun prevalence and the rate of gun suicide (Kleck & Patterson, 1993). Nevertheless, it has been argued that if fewer guns were available, the less resolute may be deterred from attempting suicide. In particular, limiting access may prevent suicides resulting from impulsive decisions, common among adolescents and those whose judgement is impaired by depression, alcohol and/or drugs.

### **Gun Prevalence and Accidents**

In view of the lethal nature of firearms, gun-related accidents are often fatal, and at very least, result in severe injuries (Turner & Leyens, 1992). It has thus been proposed that there would be fewer accidental firearm fatalities and injuries, particularly among children, if fewer civilians had access to firearms (e.g. Lester & Murrell, 1986; McDowall & Loftin, 1986; Polsby, 1986). The topic of firearm accidents has been relatively neglected within gun control debates and research, where attention has been focused on crime, homicides and suicides (McDowall & Loftin, 1986).<sup>13</sup> Whilst earlier work on this topic showed a positive relationship between levels of civilian ownership and the risk of gun accidents, serious methodological deficiencies have cast grave doubt upon these findings (e.g. Newton & Zimring, 1970, Kleck & Patterson, 1993 resp).

By contrast, results from later studies indicate that neither gun prevalence, nor interventions to reduce availability, have significantly affected the rate of fatal firearm accidents (Kleck & Patterson, 1993). It has been argued further that prevalence is not the most significant factor in relation to gun accidents (McDowall & Loftin, 1986). Instead, the critical variable is training and experience in the safe-handling of guns. McDowall and Loftin (1986) investigated the reasons for a sharp rise in fatal firearm accidents that occurred after a sudden increase in private gun ownership. The civilians concerned acquired firearms for protection during a spate

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13 However, see Kleck (1984), Klein *et al* (1976); Heins *et al* (1974), Rushforth *et al* (1974), Waller and Whorton (1973) on gun accidents.

of crime and violent public protests. This impulsive acquisition of guns by inexperienced and untrained persons led to an increase in firearm accidents. Similarly, Stenning and Moyer (1981) found that people who only borrow firearms to engage in seasonal hunting are more prone to accidents. It has thus been inferred that the risk of accidents is heightened by a lack of experience and training in the safe-keeping and handling of guns.<sup>14</sup> Importantly, studies like these highlight the danger of attributing complex social processes to single causal variables and underscore the importance of investigating factors beyond the mere possession of guns.

## **Gun Prevalence and Homicides**

### ***Positive Correlations***

The presumed causal relationship between high rates of gun ownership and criminal violence, put forward by the National Commission in 1971, has remained the basic premise of the prohibitionist position and undergirds the majority of legislated gun controls, not only in the USA but internationally. Given the key nature of this assumption, it is not surprising that a substantial amount of research has focused on testing its validity.

Numerous comparisons have been used to show positive associations between the prevalence of guns among civilians and violent crimes such as criminal homicide, aggravated assault, and robbery. International comparisons have been a most popular way of demonstrating a relationship between these variables, and the USA has tended to top the scale of gun possession and violence in the world, with the UK and Japan bringing up the rear (e.g. Williams *et al*, 1984). To illustrate more specifically, in 1995 the approximate rate of gun ownership among civilians was 83734 in the USA, as compared to 1546 per 100000 in the UK (Oprah Winfrey, 29 February 1996; Reuters, 16 October 1996 resp). North America has also been characterised by a rate of firearm homicide three times higher, and a robbery rate six times higher, than that in Britain (Time Magazine, 20 December 1993:25). Similarly, the contemporary rate of legal gun ownership in Canada is well above the British rate and the firearm fatality rates for these countries reflect this difference, namely, six and 0.1 per 100000 resp. (The Department of Justice for Canada, 1994:1-2; Reuters, 16 October 1996 resp). Considering these international findings, the incidence of legal ownership and gun-related violence appear to be positively associated.

Intranational statistics have also been employed to indicate a strong positive correlation between civilian gun possession, crime and violence. For instance, Wallace (1986) demonstrated such an association for New South Wales, Australia,

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14 Lizotte *et al* (1981), Bordua & Lizotte (1979) and Caetono (1979) have provided tangential support.

over the period 1968 to 1981. However, the most renowned figures are those showing similar dramatic increases in the levels of civilian gun ownership and violent crime in the USA from the sixties onwards (e.g. Turner & Leyens, 1992; Turner *et al*, 1977; Newton & Zimring, 1969). Violent crime rose tenfold between 1960 and 1975, while civilian gun ownership increased by 65 million from 1969 to 1978 (e.g. Turner & Leyens, 1992; Turner *et al*, 1981, Wright *et al*, 1983 resp). More recently, a statistically significant positive relationship has been demonstrated between the rate of *new* handgun ownership and the rate of *firearm* homicides in the USA between 1961 and 1982 (Turner & Leyens, 1992:204).

Inter-regional comparisons have consistently revealed a significant association between high rates of civilian gun ownership and criminal violence across North American states, with the southern states characterised by the highest rates (e.g. Newton & Zimring, 1969). A well known intercity comparison demonstrated correlations between civilian gun ownership and rates of gun homicide, aggravated assault and robbery across eight North American cities (Zimring & Hawkins, 1987). These researchers also conducted the much cited intracity investigation of Detroit between 1965 and 1968. The results revealed a fourfold rise in firearm homicide rates and a doubling in the rate of armed robberies after a sudden increase in legal gun ownership (Zimring & Hawkins, 1987). Based on a comprehensive review of the available findings, they concluded that the evidence of a positive link between the availability of guns to civilians and violent crime in the USA was convincing. Furthermore, some authors have claimed that these kinds of significant correlations indicate *causality* (Turner & Leyens, 1992).

### ***Counter-Explanations***

That there are other equally feasible explanations for the statistical association between these two variables has, however, effectively undermined the validity of the former causal claim. To expand, Wright *et al* (1983) have argued that it was highly improbable that the increased rate of violent crime in the USA between 1969 and 1978 was the direct result of the introduction of 65 million *new* guns, because: (1) 25 million of these were simply replacements for defective and confiscated guns, (2) the increase in the number of households over this period accounts for 25 million of the new guns, (3) 10 million were long-guns which are not commonly used in the perpetration of crimes, and (4) approximately five million of the new guns were police weapons. When these factors are taken into account, there seems to have been an *effective* increase in new handgun ownership by civilians of around five million, rather than 65 million. This substantially lower increase in gun ownership is not enough to adequately explain the dramatic tenfold rise in violent crime (Turner & Leyens, 1992). Furthermore, the proportion of households in which firearms are kept has actually remained remarkably consistent in the United States (US) after

1959 (Cook, 1983). It is the percentage of handguns which has increased significantly; from 25% to 50% after 1978 (Cook, 1983:50 & 79). Therefore, the reported increase in criminal violence was more likely to have been the product of another variable such as the growth in the population aged 15 to 30 that took place as those born in the postwar baby boom began to reach maturity between 1960 and 1975 (Wright *et al*, 1983). Since it is people in this age category who most frequently perpetrate violent crimes, and the violent crime rate began to decrease after 1980, this factor seems to explain the rise in violent crime during the earlier period (Turner & Leyens, 1992).

The link between high rates of criminal violence in the southern states of the USA and the widespread availability of guns in this area has also been challenged. It has been pointed out that a high proportion of the guns in the South are long-guns, owned by civilians in rural areas, whereas the bulk of criminal violence is generally perpetrated with handguns in urban areas (Turner & Leyens, 1992).

Ascertaining the meaning of statistical correlations between gun prevalence and rates of violence has also been complicated by the fact that gun ownership may well increase as a *response* to rising violence, that is, it may be an *effect* rather than a cause of increased violent crime (e.g. Smith & Uchida, 1988; McDowell, 1986; McDowall & Loftin, 1986; Kleck, 1984). A significant positive relationship between gun prevalence and rates of violence does *not* support the single conclusion that increased prevalence leads to heightened violence. It is also feasible to conclude that rising violence prompts the defensive acquisition of guns. Overall research has *not* demonstrated that gun levels significantly effect homicide rates (Kleck, 1998). To conclude statistical associations between gun prevalence and rates of violent crime may be spurious, with changes produced by different and possibly unrelated factors (e.g. Turner & Leyens, 1992). And any relationship between these two variables is neither simple nor direct (Wright *et al*, 1983).

### ***Methodological Shortcomings***

Studies of the relationship between gun prevalence among civilians and rates of violence have been seriously marred by a range of methodological problems. Many investigations have relied upon legal ownership as the sole measure of gun prevalence. This variable is an inaccurate measure of the total number of guns in civilian hands, for it excludes the substantial number of firearms illegally possessed and it is particularly important to include unlicensed firearms in the equation when assessing the impact of guns on rates of criminal violence, as they are more commonly used for criminal purposes (Wright *et al*, 1983). Accurately measuring gun prevalence has proven inordinately difficult and measurement errors have been common (Hill *et al*, 1985). Estimating the number of *illegally* owned guns has been



a major obstacle. Most countries keep records of licensed guns which provide an indication of the number of legally owned firearms in circulation,<sup>15</sup> but there are no equivalent data sources on unlicensed guns. Estimates of illegal possession based on the number of firearms reported lost, stolen, recovered and confiscated are undercounts as they exclude guns obtained on the black market, homemade weapons and unreported missing guns. Statistics derived from rates of prosecution or conviction for illegal possession also produce underestimates by excluding those who have *not* been arrested or successfully prosecuted. Measures derived from firearm crime statistics are also inaccurate, for not all guns used in lawbreaking are illegally possessed. Therefore, the questionable validity of measures of prevalence, one of the two key variables in much of the research on guns and violence, casts doubt on the validity and reliability of many of the findings in this field.

In view of such difficulties, some researchers have resorted to composite indicators of gun prevalence rather than relying upon separate figures for legally and illegally owned firearms. Gradually, a range of indirect measures of gun prevalence has been developed including inter alia: the proportion of known suicides, homicides, aggravated assaults and robberies committed using guns; the fatal gun accident rate; the rate of gun ownership among members of gun associations; and the monetary value of property stolen using firearms. There is now consistent empirical evidence that, used *together*, this set of indicators provides a valid measure of handgun prevalence at the *city* level (Kleck & Patterson, 1993). National estimates of gun prevalence, however, remain equivocal. Whilst composite measures may enable increased measurement validity at one level, there is a disadvantage to their use. Retaining separate estimates of legal and illegal gun ownership, as well as figures reflecting the legal and criminal use of guns, is critical to investigating the hypothesis that it is illegal gun owners who constitute the problem in relation to violent crime (McDowall *et al*, 1991).

### ***Gun Controls as Indicators of Prevalence***

Some researchers have focused on the stringency of gun controls assumed to reduce prevalence, rather than attempting to measure gun prevalence directly. Such studies have attempted to assess the impact of a set of gun controls on rates of violence. If a significant decrease has been demonstrated in a particular type of violence following the introduction of gun controls, the usual conclusion has been that the interventions concerned have reduced violence by decreasing the prevalence of firearms. All too often, however, this deduction has been unfounded. In some studies for instance, it is unlikely that the interventions in question would have affected the prevalence of guns.

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15 After taking into account licences revoked, guns reported defective, lost, stolen, recovered and confiscated.

Deductive errors have also resulted from the erroneous assumption that gun controls function as intended. Even if an intervention designed to diminish firearm prevalence is followed by a reduction in violence, this consequence ought not to be automatically attributed to a change in the availability of guns. For the publicity that often accompanies legal reforms may produce a temporary change of attitude to gun use, which increases restraint and decreases violence, even if the number of guns remains constant. Thus, findings from studies in which the *processes* by which gun-related interventions function are assumed rather than investigated directly, should be treated with extreme caution.

Many gun control studies have been marred by a failure to examine the discrete effects of single interventions or the interactive effects of different combinations. The bulk of work in this area has focused on the overall impact of *aggregate* gun controls and this has not advanced our understanding of which interventions, singularly and in what combinations, work by what specific means, to effect what kinds of violence, and in what ways.

In cross-sectional research on firearm-related interventions, rates of violence have been measured and compared over a specific period in jurisdictions with different gun controls. By contrast the most popular longitudinal design, interrupted time-series analysis, has involved the comparison of rates of violence in a jurisdiction, at various points in time; usually before and after the implementation of interventions. Rates of violence are affected by a multitude of known and unknown factors and, in longitudinal designs, it is difficult to control extraneous confounding variables. Despite this problem, some such studies have failed to include control areas and others have *assumed* that similar extraneous variables have been operating in control areas.<sup>16</sup> Rates of non-gun violence in a jurisdiction have sometimes been used as internal controls, but this practice rests on the faulty premise that firearm violence is affected by the same variables as other violence (Loftin & McDowall, 1984, 1981). Gun controls are frequently one among many reactions to increases in violence, making impact evaluation difficult. It is tricky to isolate the specific effects of gun controls as opposed to other interventions. Also, because they are usually implemented *after* an increase in violence, one cannot be certain that a subsequent decrease would *not* have occurred without intervention: fluctuations in rates of violence may follow an independent cyclical pattern. In view of the problems with longitudinal research, cross-sectional designs have been favoured in this field. Nevertheless, even these studies have been beleaguered by difficulties in the identification of extraneous variables, not to mention impact measurement. The bigger the jurisdiction investigated, the greater the potential for unidentified confounding effects.<sup>17</sup> Consequently, cross-sectional research on smaller areas like

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<sup>16</sup> See Pierce and Bowers (1981).

<sup>17</sup> Known as aggregation bias.

cities has been advocated (e.g. Cook, 1979; Geisel *et al*, 1969).

## Specific Effects on Violent Behaviour

### *Introductory Comment*

Work restricted to gun *prevalence* has proven to be rather limited in advancing our understanding of the relationship between firearms and violence. Merely possessing or being armed with a gun doesn't mean that the weapon will actually be used to shoot someone. For violence to occur, a firearm must be accessible, operable and fired. There is evidence indicating that, at least in some countries, a high proportion of legal gun owners never fire their weapons outside of a shooting range (e.g. Stenning & Moyer, 1981). It is thus preferable to consider the factors that affect whether or not a gun is *used* and, if so, to what effect. This requires the study of a wider range of variables affecting violence such as the accessibility of weapons, attitudes to the use of guns and violence, and the specific effects of firearms on behaviour.

### *The Substitution Effect*

Many authors have contended that factors other than the availability of guns motivate people to behave violently.<sup>18</sup> The argument is that people who intend to perpetrate violence and cannot obtain firearms will simply find alternate means (e.g. Lester & Frank 1988; Kaplan, 1986). This is known as the substitution effect. However, a number of studies have consistently shown *no* evidence of this effect across a range of countries including Western Europe, Canada and the USA (e.g. Lester, 1991[b], 1987[b]; Killias, 1990; Sproule & Kennett, 1989, 1988). In contrast to homicide, weapon substitution *has* been demonstrated in relation to robbery; it seems that when handguns are less accessible to would-be robbers, long-guns are substituted and, when neither type of firearm is freely available, other weapons like knives are employed (e.g. Kleck, 1986[a]). This highlights the importance of intention as a mediating variable. But even without a substitution effect, a reduced prevalence of guns would not necessarily result in a lower rate of homicide, for those who possess firearms might kill more frequently. It has been shown that compared to other weapons, gun homicides more often involve multiple victims (Sproule & Kennett, 1989).

### *The Disinhibiting Effect*

A most popular hypothesis has been that guns have a disinhibiting effect which heightens the probability of use. Unlike most weapons, firearms allow the infliction of injury from a distance, without physical contact and without having to observe the damage done, and being armed with a gun markedly increases a person's power in

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18 Particularly economic and political inequities.

relation to others who are not equivalently armed (Kleck & McElrath, 1991; Cook, 1982; Goode, 1972, 1971). Firearms may also give some people the audacity and means to commit crimes that they might not otherwise have considered feasible (e.g. Kleck, 1986[a]; The American Bar Foundation, 1967). Therefore it has been postulated that guns serve to embolden the fearful, the physically weak and the squeamish, so encouraging violent and often lethal confrontations that may not otherwise have taken place (e.g. Kleck & Patterson, 1993; Cook, 1991, 1982; Newton & Zimring, 1970).

### ***The Intensification Effect***

It has long been claimed that when used, guns are more likely to kill than other weapons (Turner & Leyens, 1992; Chappell *et al*, 1988; Block, 1981, 1977). However, this apparently self evident notion has been challenged. It has been maintained that firearms more commonly cause death because these weapons are selected by people who *intend* to kill (e.g. Cook, 1991, Zimring, 1968). Therefore, it is not the technical properties of guns that are the key variable but the intentions of users (e.g. Kleck, 1986[a]). In support of this claim it has been shown that the 'success rate' of gun assaults is higher when the intention is to kill (Newton & Zimring, 1969). But other empirical evidence has not confirmed this postulate. Toch (1969) interviewed a sample of men convicted of firearm homicide and found that the majority had intended to hurt rather than to kill. It has been demonstrated further that most aggravated assaults are not preplanned, but take place on impulse with weapon selection determined by immediate availability (e.g. Toch & Lizotte, 1992, Cook, 1991). These incidents usually result from acts of violence committed during altercations like bar-room disputes, arguments between intimate partners and family quarrels (e.g. Toch & Lizotte, 1992; Berkowitz, 1974; Newton & Zimring, 1969; Toch, 1969). Unfortunately, if guns are accessible in such situations, the outcome is more likely to be fatal (e.g. Neal, 1989; Polsby, 1986). It has been demonstrated that 90% of firearm fatalities involve guns belonging to people in the victim's immediate social circle (Turner *et al*, 1977). It has also been shown that legally owned handguns are six times more likely to be used on a family member or friend than on an intruder,<sup>19</sup> and that a firearm in the home significantly increases the risk of homicide among family members and friends (Kellerman *et al*, 1993; Time Magazine, 6 February 1989; Kellerman & Reay, 1986).

Overall it seems that, while some people are determined to kill so select guns, for many others the intention to kill or harm is transient and the choice of weapon is determined by immediate availability. When the intention to kill is weak or short-lived availability often determines the type of weapon used and hence the likelihood of death (Cook, 1991; Zimring, 1968). Therefore, if guns are not available under

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19 In accidents, homicides and suicides.

such circumstances, fewer confrontations are likely to prove fatal. Logically these kinds of findings have been used to promote the reduction of firearm availability as a means of decreasing certain types of homicide.

### ***The Weapons Effect***

The instigatory effect of firearms has been investigated from another angle, namely, that of a person confronted with a gun. Since the late sixties a substantial amount of research has been conducted on what Berkowitz and LePage (1967) originally termed the weapons-effect. This is the notion that guns incite violence in conflictual situations by provoking aggressive retaliation, and is based on the hypothesis that a person is more likely to express aggression in the presence of stimuli s/he associates with aggression. It has been theorised further that, through enactive and observational learning, guns become aggressive stimuli by frequent association with aggressive acts in everyday life and the mass media (e.g. Huesmann, 1988; Berkowitz, 1984, 1974). In short, guns are said to stimulate impulsive aggression facilitating reactions (e.g. Berkowitz, 1968).

A large number of laboratory and field investigations of the weapons-effect have been carried out in different countries, with findings both for<sup>20</sup> and against.<sup>21</sup> A number of studies have shown that under specific and somewhat artificial conditions, guns may instigate aggressive behaviour in certain men i.e. habitually irritable men already angered by some event (e.g. Caprara *et al*, 1984; Turner *et al*, 1975). However, the accumulated evidence suggests that the weapons-effect is unlikely under realistic conditions (Kleck, 1998).

### ***The Inhibitory Effect***

Although guns can stimulate violence they can also evoke anxiety that inhibits aggressive reactions (e.g. Cahoon & Edwards, 1985; Leyens & Parke, 1975; Buss *et al*, 1972; Ellis *et al*, 1971; Fraczek & McCauley, 1971). The relationship between firearms and aggression has been recognised as complex, with effects shaped by the contextual meanings individuals learn to attach to guns (Turner & Leyens, 1992). It is thus imperative to explore how individuals perceive weapons in order to understand their reactions (e.g. Turner & Leyens, 1992; Turner *et al*, 1975). Studies of children living in war conditions and their responses to toy firearms, have provided additional support for the latter postulate. It has been demonstrated that the presence of toy guns increased co-operative behaviour and decreased aggressive conduct among Palestinian and Yugoslavian children. These children had come to associate firearms with freedom and security, rather than with aggression, because

20 For example see Leyens and Dunand in: Turner and Leyens (1992), Carlson *et al* (1990), and Turner *et al* (1977).

21 For example see Cahoon and Edwards (1985), Buss *et al* (1972), Ellis *et al* (1971), and Page and Scheidt (1971).

they had been exposed mainly to firearms in the hands of soldiers who functioned as a protective force (Mahjoub, Leyens and Yzerbyt, and Zuzul in: Turner & Leyens, 1992).

Clearly, the mere presence of a gun in a confrontation does not necessarily result in death or even injury. To illustrate, people were killed or injured in only two per cent of the one million defensive shootings that took place in the USA during 1980 (Cook, 1985). And crime victims were killed or injured in only three per cent of the 639000 offences in which guns were used (Rand, 1990).<sup>22</sup> Various options are available to a person who holds a deadly weapon: s/he may frighten, coerce compliance, injure someone non-fatally and/or kill (Kleck & McElrath, 1991). However, relatively little is known about the impact of various weapons on the outcome of interpersonal conflicts (Wright *et al*, 1983).

Kleck and McElrath (1991) conducted one of the few empirical studies of threatening encounters between strangers.<sup>23</sup> They examined whether confrontations escalated into actual physical attacks and whether injury or death resulted. This investigation showed that the presence of a gun in a potentially violent interpersonal confrontation increased the probability of death *only* if the encounter escalated into a physical attack (Kleck & McElrath, 1991). But when just one party to such a conflict was armed with a gun, the chance of a physical attack decreased, as did the risk of injury. This is compatible with the earlier finding that the threat of a gun often substitutes for an actual attack (e.g. Goode, 1971). It has also been used to explain lower rates of injury among victims of robberies and rapes committed with guns (e.g. Luckenbill, 1982, 1981; Block, 1981, 1977; Cook & Nagin, 1979; Hindelang, 1976; McDonald, 1975). Under certain circumstances then, the presence of a gun can serve to *defuse* a potentially violent situation so diminishing the chance of injury and death.<sup>24</sup> In fact, "[t]he same qualities of weapons [guns] that make them dangerous if used to attack can inhibit or preclude the necessity of actually using them" (Kleck & McElrath, 1991:673-4).

Such research serves to highlight the importance of expanding the focus from fatal outcomes of gun use, to the potential consequences of firearms in different situations. Whilst the high reliability of gun fatalities make them an attractive measure for research purposes, the widespread use of homicide as *the* indicator of firearm violence has produced a somewhat narrow and simplistic construction of the impact of guns. Death is the most severe consequence of firearm use. Nonetheless, it is neither the sole nor necessarily the most common outcome of interactions in which guns are available. Not only should non-fatal firearm violence such as injuries and missed shots be investigated, but also situations in which guns are

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22 Annual average in the USA between 1979 and 1987.

23 In the USA from 1979 to 1985.

24 See Kleck and Delone (1993), Kleck and McElrath (1991), Turner *et al* (1975), Fraczek and McCauley (1971), Goode (1971) and Fischer *et al* (1969).

present but not used and particularly the extent to which the mere threat of a firearm results in the aversion of actual violence. Furthermore, to better understand the impact of guns, studies must not be limited to crime but must include lawful violence. The nineties have seen a more sophisticated approach develop. Research attention has been shifted to identifying the specific circumstances in which firearms are deployed, the range of outcomes, and the sequences of events that escalate into shootings (e.g. Toch & Lizotte, 1992; Kleck & McElrath, 1991).

### **Interim Conclusion**

The bulk of empirical research into the relationship between gun prevalence and rates of violence has been seriously impaired by methodological shortcomings; most significantly low levels of measurement validity in relation to key variables. The results have been mixed, negative or rather weak. Considering the most reliable findings, the evidence indicates that the level of legal private gun ownership does *not* significantly affect the overall rate of homicide (Kleck & Patterson, 1993; Kleck, 1986[a], 1984). In view of the contradictory effects among numerous mediating variables, it should not be surprising to find that the net effect of guns on homicide may be close to zero (Kleck & Patterson, 1993). It has become evident that the impact of firearms on violence is a more complex matter than previously acknowledged. A comprehensive understanding requires that research be designed to examine the discrete and interactive effects of each relevant variable on the outcomes of potentially violent situations. Finally, it has been concluded that, despite the profusion of work in this field, there is still no consistent and reliable support for the assumption that the prevalence of guns has a causal effect on rates of violence (e.g. Kleck & Patterson, 1993; Kleck & McElrath, 1991; Wright *et al*, 1983). Given that it is people, not guns, who kill and many factors motivate people to pull a trigger, they might still kill at a similar rate if guns were not readily available.

### **Gun Prevalence and Crime**

#### ***Introductory Comment***

Although research on guns in relation to crime overlaps with work on firearms and homicide, the former field is broader in scope. Numerous studies have examined the impact of guns on the overall crime rate. Some investigations have focused on specific crimes, particularly robbery and aggravated assault, these being the offences most frequently perpetrated with firearms (Kleck, 1986[a]).<sup>25</sup>

Given the low reliability and validity of crime measures, extreme caution should be exercised in evaluating findings reported from studies in which the crime rate has been employed as a central variable. Fluctuations in the number of reported

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<sup>25</sup> And relatively uncommon in rape, mugging, burglary and theft, see Kleck (1986[a]).

offences, prosecutions and convictions, are generally not just the product of changes in the amount of lawbreaking. For example, the introduction of victim-sensitive police procedures may serve to increase the rate at which rapes are reported, and the prosecution rate for certain offences may rise due to the adoption of a tougher policy. Crime figures that are based on the number of reported offences, prosecutions and/or convictions neglect the so-called dark figure of unreported lawbreaking. Even data derived from self-report surveys of crime, arguably the most accurate of the available crime statistics, are distorted by a range of factors.

### ***Guns as a Criminogenic Factor***

A prevalence of licensed guns provides law breakers with a ready supply of firearms. This is one of the main ways in which lawful gun possession is said to facilitate crime (e.g. Kleck, 1984; Moore, 1981; Newton & Zimring, 1970). This claim has found empirical support at least in the USA where it has been shown that between 40% and 70% of handguns used in law breaking were originally stolen (Wright & Rossi, 1986:196). Many of these weapons are redistributed among law breakers via quasi-legal, private sales of second-hand guns (e.g. Kleck, 1986[a]; Wright & Rossi, 1985; Burr, 1977).

The findings from research into the relationship between legal gun ownership and overall rates of crime have been contradictory. In general, Canadian studies have indicated reductions in the crime rate following the introduction of stringent gun controls designed to reduce civilian ownership (Hung, 1993). But similar research in the USA has not generated such consistent evidence.<sup>26</sup>

More dependable findings have been produced from studies of gun availability in relation to individual offences. The accumulated evidence with respect to robbery indicates that, due to substitution and displacement effects, the availability of firearms does not have a significant *net* effect on the overall rate of robbery (e.g. Kleck & Patterson, 1993); Kleck, 1986[a]; McDowall, 1986; Cook, 1983, 1982, 1979). So when access to guns is restricted, would-be robbers appear to change weapons, victims or move to areas where firearms are accessible. But the causal relationship between intention and weapon type seems to be two-way; "the task determines the tool and the tool determines the task" (Cook, 1983:56). Additionally, the relative vulnerability of a crime target/victim significantly affects the choice of weapon: guns are preferred when the crime target is well defended. Hence, those who rob banks and other secure premises almost always carry guns (e.g. Kleck, 1986[a]; Cook, 1983, 1980; Cook & Nagin, 1979; Skogan, 1978; Cook, 1976). Reducing the availability of guns to potential robbers appears to decrease robberies against tougher targets yet increases offences against more

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26 See Kleck and Patterson (1993), McDowall and Loftin (1986), Magaddino and Medoff (1984), Wright *et al* (1983), Clotfelter (1981), Bordua and Lizotte (1979), Kleck (1979) and Seidman (1975).



vulnerable victims (e.g. Kleck, 1986[a]). Furthermore, because firearms enable lucrative robberies, the rate of offending may increase when guns are in short supply (e.g. Kleck & Patterson, 1993). Lowering gun prevalence may also increase the rate of homicide associated with robberies (e.g. Cook, 1982, 1979). It seems that armed robbers are less likely to kill their victims, probably because guns evoke greater compliance. However there is some encouraging evidence suggesting that the following interventions can reduce the rate of armed robbery: stricter licensing of gun dealers, and harsher penalties for carrying unlicensed firearms and for armed robbery (e.g. Kleck & Patterson, 1993; McPheters *et al*, 1984; Blose & Cook, 1980; Deutsch & Alt, 1977).

A cross-sectional investigation by Sloan *et al* (1988) is commonly cited in support of the effect of gun prevalence on aggravated assault. This group of researchers claimed to have demonstrated a significant decrease in aggravated assault in Vancouver (Canada), after the implementation of interventions to reduce gun prevalence. In Seattle (USA), the control city where there had been no new firearm-related interventions, they found no change in the rate of aggravated assault (Sloan *et al*, 1988). However, these two cities were characterised by similar levels of gun prevalence (Kleck, 1998). Hence, the main conclusion reached in this study is invalid: differences in gun prevalence were not responsible for differences in the rates of aggravated assault.

However, there is some indication that stricter licensing laws for gun dealers (that restrict availability) tend to lower the rate of aggravated assault (e.g. Blose & Cook, 1980). Reductions in aggravated assaults as a consequence of decreased gun availability may be explained in terms of the intensification effect: because a large proportion of assaults are impulsive, limiting firearm availability may serve to decrease the chances of altercations escalating into homicides. But it is also important to note that, limiting gun availability may *increase* the vulnerability of those who rely on firearms for self defense because they are weaker than their assailants, for example, women who use guns to defend themselves against abusive male intimates, and elderly people who employ firearms against younger attackers (e.g. Kleck, 1986[a]; Cook, 1982). On the positive side, however, it may reduce attacks on *less* vulnerable targets, like younger males and police officers, against whom firearms are commonly employed (Cook, 1983).

### ***Guns as a Crime Inhibiting Factor***

Thus far, work concerned with guns in the hands of lawbreakers has been considered. But, firearms "... empower both those who would use them to victimize and those who would use them to prevent their victimization" (Kleck, 1988:17).

The defensive use of guns by civilians is relatively common in North America: averaging about 340000 incidents p.a. (Kleck, 1986[a]:45). And it seems that handguns are used in self defence as often as they are used to commit crimes (Kleck, 1988).<sup>27</sup> Furthermore, at times, civilians have shot and lawfully killed more offenders than the police (Kleck, 1986[a]:44). Thus, while the possession of guns by offenders may have a crime facilitating effect, legal gun ownership may be crime *inhibiting* (Kleck, 1988, 1986[a]). It has been theorised that defensive civilian gun ownership works to reduce crime by two key mechanisms: first by decreasing the chance of certain offences being *completed*, as guns enable civilian victims to resist offenders especially residential burglars (e.g. Kates, 1991; Robin, 1991; Kleck, 1988, 1986[a]; Green, 1987; Young, 1985; Kleck & Bordua, 1981). The second crime inhibiting effect is known as *deterrence*, that is, lowering the probability that certain offences will be committed (Kates, 1991). Deterrence is said to operate in two main ways: *general* deterrence, which means that lawbreakers refrain from committing certain crimes in order to avoid the risk of being confronted by armed civilians (e.g. Time Magazine, 6 February 1989; Wright *et al*, 1983; Firman, 1975). And *specific* deterrence, which means that lawbreakers, who actually experience resistance from gun wielding civilians during attempted offences, are discouraged from engaging in further lawbreaking (e.g. Green, 1987).

There is some evidence suggesting that defensive private gun ownership and use may reduce the completion rate and the risk of injury and death for victims and lawbreakers in certain crimes. For instance, in cases of attempted robbery and burglary, it seems that resistance with a gun is the most effective victim-reaction. A number of studies have found that victims armed with guns are more likely to resist lawbreakers and to prevent the completion of offences, and less likely to be injured in the process (e.g. Kleck, 1988; Kleck & Bordua, 1981).<sup>28</sup> Moreover, even if defensive gun ownership does not reduce the rate of offending due to displacement, the risk of injury and death associated with the substitute offence may be lower. For example, it has been demonstrated that when burglars perceive civilian gun ownership to be widespread, they are more likely to choose unoccupied premises to decrease the probability of violent confrontations with victims (e.g. Mayhew, 1987; Rengert & Wasilchick, 1985; Kates, 1983; Waller & Okihiro, 1978; Block, 1984).<sup>29</sup> Overall it appears that defensive civilian gun ownership *may* lower the completion rate and the risk of death and injury for some offences, particularly burglary and robbery. However, it is also noteworthy that the families of civilians who acquire guns for self defense are at greater risk of domestic homicide victimisation (Kellerman *et al*, 1993).

It has been postulated further that widespread licensed gun ownership among

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27 Based on a 1980 national sample.

28 But not true of other weapons.

29 Re the UK, USA, Canada and the Netherlands.

civilians may *deter* the commission of certain kinds of offences, like residential burglary, robbery and assault by burglars (e.g. Green, 1987). One way of testing the crime inhibiting impact of civilian gun ownership has been to examine the association between levels of defensive possession and rates of offending for specific crimes (e.g. Seitz, 1972; Newton & Zimring, 1970; Geisel *et al*, 1969). Unfortunately, the findings from this kind of study have been problematic, mainly because of the focus on *actual* levels of gun ownership rather than lawbreakers' *perceptions* of this threat. After all, potential offenders' views are the essential ingredient for general deterrence; dependent on their impressions of whether potential victims are likely to be armed with guns and also the likelihood of victims actually using guns in resistance (e.g. Kleck, 1988).

Two alternate approaches have thus been developed to test the deterrence hypothesis: studies of offenders' opinions about the effect of civilian gun ownership and natural quasi-experiments in which crime rates have been examined after well publicised increases in defensive civilian gun ownership.<sup>30</sup> Whilst opinion surveys have tended to support the *specific* deterrence hypothesis,<sup>31</sup> most findings have been seriously marred by reporting errors and the use of unrepresentative samples. At best, such studies reflect the views of offenders who have been caught and it is logical to surmise that their opinions may well differ from those who have offended, but have *not* been arrested or convicted (Green, 1987).

The quasi-natural experimental approach has been adopted in a range of investigations including, inter alia, examinations of: (1) the rape rate in Orlando (Florida) following the implementation of a training program in defensive gun use for women (e.g. Kleck & Bordua, 1983; Krug, 1968); (2) retail-store robbery in Kansas City (Kansas) after the police trained store personnel in defensive gun use (e.g. Silver & Kates, 1979; The United States Small Business Administration, 1969); (3) burglaries in Kennesaw (Georgia) subsequent to the passing of a local ordinance requiring every household to possess a firearm (e.g. McDowall *et al*, 1989; Kleck, 1986[b]; Benenson, 1982); (4) burglary after the introduction of a law prohibiting the sale of handguns in Morton Grove and Evanston (Illinois) (e.g. McDowall *et al* 1991); and (5) burglary in the state of Colorado following the implementation of legislation permitting homeowners to kill in order to defend their property (e.g. Wilbanks, 1990). On the whole the evidence derived from these kinds of investigations has been somewhat disappointing.

"[G]eneral deterrence seems to have been directly demonstrated for a particular offence [rape] in one jurisdiction for a short while. Where evidence has been found to support absolute crime reduction through deterrence [general and specific], it has been marred by concerns about displacement" (Green 1987:76).

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30 Or after incidents in which victims have successfully resisted offenders.

31 See Wright and Rossi (1986), Link (1982) and Firman (1975).

In short, although certain crimes may decrease, others may increase, so offending may not decline: lawbreakers may simply select different victims, often those who are more vulnerable and less likely to offer armed resistance.

After reviewing the accumulated findings, McDowall *et al* (1991) maintained that, at best, widespread legal gun ownership by civilians has neither a *significant* nor a *sustained* inhibitory effect on crime. Despite the persuasive logic of the crime inhibiting postulate, the accumulated evidence does not convincingly support the claim that well publicised, high levels of defensive civilian gun ownership deter crime, either specifically or generally (McDowell *et al*, 1991). More generally, it has been concluded that firearms tend to have a violence-reducing effect in the hands of law-abiding citizens, but in the hands of lawbreakers these same weapons can have both violence increasing and decreasing effects (Kleck, 1998).

## **Factors Affecting Private Gun Ownership**

### ***Introductory Comment***

Research on variables affecting lawful gun ownership among civilians has developed as an offshoot of work on gun prevalence (Toch & Lizotte, 1992). The main goal in this rather substantial subfield has been to identify those factors that encourage civilians to acquire firearms, usually in order to inform interventions aimed at diminishing private possession.

Guns are privately owned for a variety of reasons including as collectors' items, for recreation such as target shooting, for work purposes like culling and subsistence hunting, and for self defence (e.g. Tonso, 1984). There are also those who possess firearms in order to perpetrate offences. However, in contemporary North America, the majority of civilians who own licensed guns have acquired these weapons for protection (e.g. Cook, 1991; Kleck, 1988). Defensive civilian gun ownership is thus currently viewed as a key contributory factor to the rising prevalence of guns in the USA and much work is being done to ascertain which factors prompt civilians to obtain guns for the purposes of self defense (e.g. Marciniak & Loftin, 1991; Smith & Uchida, 1988; Young *et al*, 1987; Young, 1985, 1984; Wright, 1984). In this regard the collective security hypothesis has attracted most of the attention (Young *et al*, 1987).

### ***The Collective Security Hypothesis***

In an industrialised democracy, collective mechanisms like the police and the legal system are established to provide for the security of citizens and on this basis, each individual's right to protect her/himself is limited (Maine, 1954). If these collective institutions fail, however, individuals become highly vulnerable to victimisation. Citizens' compliance with this arrangement is thus tentative as the threat of violent crime provides strong motivation for non-compliance (Young *et al*, 1987). It has

been argued that the contemporary North American public have lost confidence in the police and legal system because these institutions have failed to stem the rising tide of violent crime. Fear of criminal victimisation has thus risen and, in response, civilians have increasingly acquired guns in order to protect their interests. The bulk of civilians own guns for protection and, notably, the defensive use of guns by civilians in response to offences like robbery and burglary is at least as common as police arrest (Kleck, 1988). In this context, defensive civilian gun ownership is a structured form of social action (Smith & Uchida, 1988).

The collective security hypothesis is something of a chain of subpostulates, and researchers have attempted to test the validity of different links in this hypothetical chain: there has been consistent empirical support for a significant association between the end links, that is, factors that lower public confidence in collective security institutions and increases in defensive civilian gun ownership.<sup>32</sup> Notably, evidence showing increased legal gun ownership as a *consequence* of rising violence and crime has been much stronger than that indicating firearm prevalence as a *cause* of increased violence (e.g. Kleck & Patterson, 1993; Lester & Murrell, 1986; Magaddino & Medoff, 1984). Studies have also shown that factors like increased rates of violent crime and civil conflict tend to lower public confidence, especially when people consider the responses of collective security institutions to be inadequate (e.g. Young *et al*, 1987; McDowell & Loftin, 1986, 1983). Additionally, there is systematic evidence of an inverse relationship between public confidence in collective institutions and defensive civilian gun ownership (e.g. Young *et al*, 1987; McDowell & Loftin, 1986, 1983; Young, 1985).

However, the links between public confidence and fear of crime, and between fear of crime and defensive civilian gun ownership, have *not* been demonstrated sufficiently. To the contrary, studies have revealed that the effect of public confidence on civilian gun ownership is *independent* from fear of crime (e.g. Young *et al*, 1987; Young 1985). After reviewing the relevant literature, Wright *et al* (1983) have concluded that there is *no* reliable evidence of a significant relationship between fear of crime and defensive civilian gun ownership and more recent studies have supported this conclusion (e.g. Arthur, 1992; Archer & Erlich-Erfer, 1991; Bankston, 1990). Thus, it may be concluded that it is not fear of crime which is the most significant predictor of defensive civilian gun ownership, but rather public confidence in the institutions of collective security.

Nevertheless, work on the relationship between fear of crime and defensive gun ownership has continued. A number of mediating factors have been revealed enabling the modelling of a more complex relationship among the variables. Research has demonstrated that fear of crime is highest among people who are

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32 See Kleck and Patterson (1993), McDowell and Loftin (1986, 1983), Kleck (1984, 1979), Clotfelter (1981), Lizotte *et al* (1981), Bordua and Lizotte (1979) and Seidman (1975).

commonly exposed to criminal victimisation, those who perceive themselves to be at risk and those with few resources for coping with the consequences of criminal victimisation (e.g. Bankston & Thompson, 1989; Ortega & Myles, 1987). In the USA, it appears that black people, women and the elderly are most afraid of criminal victimisation (Ortega & Myles, 1987). But these groups do not have the highest levels of defensive gun ownership, which underscores the fact that, on its own, fear of crime does not inevitably lead people to acquire guns. In fact, living in a densely populated, large city is the best predictor of civilian handgun ownership and within the urban populace it is whites, men, younger people and those in higher income brackets who are most likely to own handguns for protection (e.g. Bankston, 1990; Bankston & Thompson, 1989; Young 1985). Furthermore, socio-economic status, sex, age and race have significant *mediatory* effects on both gun ownership and fear of crime, which are said to be simultaneously determined (e.g. Arthur, 1992; Marciniak & Loftin, 1991; Hill *et al*, 1985; DeFronzo, 1979). For instance, it has been found that heightened fear of crime increases the probability of defensive gun ownership among higher income, white men in the USA (e.g. Whitehead & Langworthy, 1989; Young *et al*, 1987). Here racist stereotyping and gender role socialisation provide credible explanations. In North America, the mass media have constructed a stereotype of violent criminals as young, black males (e.g. Young, 1985). This menacing image has served to bolster already existing racist attitudes and appears to have increased fear of crime among whites. Actively defensive behaviour, particularly in relation to women, children and property, is a key aspect of the masculine gender role. Hence, defensive gun ownership among men may well be an aggressive response to the perceived threat of crime which, for white men, has been shaped by racial prejudice (e.g. Young, 1985). However, this explanation does not account for the recent marked growth in handgun ownership among young, black women living in high crime urban areas in North America (Toch & Lizotte, 1992; Thompson *et al*, 1991). It is now clear that not everyone who fears crime resorts to acquiring a gun for protection and, more importantly, that only a subgroup of those who possess guns actually *use* these weapons defensively. Nevertheless, there does appear to be a psychological benefit to possessing a handgun for protection, that is, less fear of crime (e.g. Lizotte *et al*, 1981; Lizotte & Bordua, 1980).

It would thus seem important for research to map who owns what types of guns, for what purposes and, more importantly, who uses firearms and under what circumstances. Unfortunately, work of this specific nature is still rather limited. Even though somewhat outdated now, Stenning and Moyer's (1981) national survey of the Canadian population is a good example of the kind of research that is needed. Their findings demonstrated unequivocally that factors like gender, age, occupation and size of community affect the ownership and use of firearms. More specifically, they showed that, in Canada, licensed firearm owners were most likely to be older

males who lived in urban areas, performed white-collar jobs and had formal training in the handling of firearms. Significantly, over half of these gun owners had never fired their guns except during shooting practice and this finding was used to develop interventions designed to dissuade civilian gun ownership. The investigation also revealed that hunting accidents were most common among younger males living in urban areas, who borrowed guns but had *not* been trained in their safe-use. Policy requiring instructional programmes in the safe-handling of guns was developed for this target group. Such research underscores the value of using reliable empirical data to identify specific problems pertaining to guns and tailor-make interventions.

### ***Cultural and Structural Variables***

The central role played by *meaning* has been clearly demonstrated in gun use. Numerous studies have examined factors affecting the meanings associated with firearms and people's willingness to use guns (Toch & Lizotte, 1992). The investigation of firearm-related meanings within different groups has been a popular focus. Various researchers have compared civilians' attitudes to firearms across societies, regions and subcultures (e.g. Brennan *et al*, 1993; Harding, 1993; Whitehead & Langworthy, 1989; Tonso, 1984; Lizotte & Bordua, 1980; Bordua & Lizotte, 1979). Some studies have revealed significant international variations in civilians' attitudes to the possession and use of guns (e.g. Brennan *et al*, 1993; Harding, 1993; Mauser, 1990). Most notably, the British are said to be less inclined than North Americans to use firearms (Reuters, 16 October 1996; Kopel, 1993, 1992).

A substantial amount of research has been conducted on inter-regional differences in attitudes to guns and violence within the USA. It has been established that the rate of civilian gun ownership is highest in the southern states and lowest in the north-eastern states (Toch & Lizotte, 1992). Much attention has been focused on explaining higher rates of homicide and firearm possession in the southern states (e.g. Brennan *et al*, 1993; Hill *et al*, 1985; Loftin & Hill, 1974; Shannon, 1954). Prevalent gun ownership in the South has been attributed to the fact that this was the first frontier region to be settled. Over the years behaviour, attitudes and norms pertaining to gun ownership have been transmitted intergenerationally, giving rise to a longstanding and tenacious subculture of firearm possession among Southerners. Today civilian gun ownership in the South is viewed as part of a cultural heritage (e.g. Toch & Lizotte, 1992). This Southern subculture centres on the ownership of guns for protection, sport and hunting (e.g. Dixon & Lizotte, 1987; Lizotte *et al*, 1981; Lizotte & Bordua, 1980). Because a high proportion of the southern population is rural, long-guns are most popular especially shotguns which are used predominantly for hunting small game (e.g. Toch & Lizotte, 1992; Dixon & Lizotte, 1987; O'Connor & Lizotte, 1978).

The South is also said to be characterised by a subculture of violence: the use of violence in interpersonal disputes is allegedly condoned to a greater extent in the South than it is in other regions of the USA (e.g. Hackney, 1969). This subculture has been explained as an established tradition, emanating out of the long conflictual history of this area and based on the widespread belief that Southerners have been victimised by malicious external forces (e.g. Huff-Corzine *et al*, 1991; Corzine *et al*, 1986). It has been shown that when people attribute blame for negative circumstances to factors beyond themselves, they are more likely to express their anger and frustration as homicide than suicide (Henry & Short, 1954). Indeed the externalisation of culpability is one of the key justifications for the use of violence against others. However, this notion of a subculture of violence giving rise to a higher level of homicide in the southern states of the USA has *not* been consistently supported by empirical evidence (e.g. Toch & Lizotte, 1992). It has been demonstrated to the contrary that the use of violence in general, and guns in particular, is not condoned within the gun-related subculture of the South any more than it is among people in other regions of the US (e.g. Toch & Lizotte, 1992; Lizotte *et al*, 1981; Lizotte & Bordua, 1980). Significantly the evidence shows that structural, rather than cultural, factors generate the greenhouse conditions for violence in the southern states. The crux of this explanation is that *relative* economic deprivation fuels frustration and externally directed aggression (e.g. Baron & Straus, 1988). In general, people in the South are economically disadvantaged compared to those in the North, and black people in the South are the most economically deprived group in the entire country. Notably, rates of lethal violence are highest among black people in the South (Huff-Corzine *et al*, 1991). The accumulated findings indicate that relative economic inequality mediated by race is *the* significant explanatory variable in relation to higher rates of homicide in the South (Huff-Corzine *et al*, 1991).<sup>33</sup>

### ***Other User Characteristics***

Just as race and sex have been found to mediate between gun acquisition and fear of crime, these social divisions shape attitudes to the use of violence in general and to guns more specifically. The USA, like other contemporary societies, is gendered and male dominated. Biological females and males are socialised to fulfil different social roles. Several studies have demonstrated that women and men kill, and are killed, in ways that are clearly gendered (e.g. Kirsta, 1994; Jurik & Winn, 1990; Stark, 1990; Howard, 1986). It has been shown that men more frequently kill strangers and that women more commonly kill in self defence (Gartner *et al*, 1991). Furthermore, psychological research consistently shows that gender role socialisation develops in females the tendency to internalise, rather than to externalise, aggression

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33 Also see Lester (1987[a]), Brenner and Swank (1986) and Messner (1982).



and that the opposite occurs in relation to males (e.g. Rohrbaugh, 1981). This explanation has been used to theorise the finding that, in most countries, it is men who are the main perpetrators of violence including gun-related violence (e.g. Ferreira DeCastro *et al*, 1991, 1986; Danielsen, 1989[a], 1989[b], 1989[c], 1989[d], 1989[e]; Lunden, 1989; Zahn & Sagi, 1987). Internationally, the overwhelming majority of homicides are perpetrated by males (e.g. Ferreira DeCastro *et al*, 1991, 1986; Lunden, 1989; Zahn & Sagi, 1987; Henry & Short, 1954).<sup>34</sup> Indeed, the homicide rate is significantly lower in societies in which females outnumber males (e.g. Stark, 1990). Thus, even though women may be more afraid of and vulnerable to violence than men, they appear as a group to be less willing to use violence against others (e.g. Plate & Schneider, 1989).<sup>35</sup> It should be noted that, although the effects of gender on attitudes to violence and on the actual use of force are highly significant, they are not *independent*. Instead, gender interacts with other variables, particularly race and socio-economic status, in shaping gun ownership and attitudes to the use of guns (e.g. Gartner *et al*, 1990). It has been shown, for example, that the probability of women killing their children increases when their participation in the paid labour force is high, but their economic and social status remains low (Fiala & Lafree, 1988).

Race is also a significant predictive variable in terms of gun use in the USA (e.g. Williams *et al*, 1984). In this country, the people who are most likely to use a firearm are young black males who use alcohol, those who have experienced gun violence before, and those who have previously been arrested by the police (Williams *et al*, 1984).<sup>36</sup> Moreover, assailants who use guns tend to have similar social characteristics to their victims, and most violence in the USA is *intraracial* (e.g. Mulvihill *et al*, 1969; Huff-Corzine *et al*, 1991; Bell, 1987 resp).

### ***Characteristics of Victims***

In the USA firearms are a leading cause of non-natural death, whereas in Britain guns are responsible for relatively few fatalities (Fingerhut, 1993; Chapman & Milroy, 1992 resp).<sup>37</sup> In the same way that violent gun use is more common among certain groups than others, firearm victimisation is *not* randomly distributed (e.g. Williams *et al*, 1984). Economic disadvantage increases vulnerability to homicide of all kinds, including firearms (e.g. Loftin & Parker, 1986). In North America, those who fall victim to gun assaults are usually socially similar to their assailants, that is, young, economically disadvantaged, black males residing in urban areas (e.g. Sorenson *et al*, 1993; Block, 1985, 1977; Williams *et al*, 1984; Cohen *et al*, 1981;

34 Also see Sakuta (1989), Ayral *et al* (1985) and Fishbein *et al* (1985) on murder-suicides.

35 See Ben-David (1993) on female violence.

36 See Arbit (1990) on adolescents who kill and Gartner and Parker (1990) on homicide and age internationally.

37 See Grabosky (1989) on violence in Australia.

Hindelang *et al*, 1978).<sup>38</sup> It has been shown that black males aged between 16 and 24, living in urban areas, are at least twice as likely to be assaulted with a firearm than white males of the same age-group (e.g. Fingerhut, 1993; Kopel, 1993; Rand, 1990).<sup>39</sup>

Like race, age is a highly significant factor in firearm victimisation. The rate of gunshot wounds sustained by those under 16 doubled in the USA between 1987 and 1990 (Time Magazine, 20 December 1993:28). While guns took second place as a cause of death for people between 10 and 34, they were the leading cause for black males in this age-group in North America in 1992 (Fingerhut, 1993). Gun assault victims are more likely to have previously experienced violence and had contact with the police. They also tend to justify the use of force in a wider range of circumstances and many perpetrators have themselves been subjected to gun assaults (e.g. Williams *et al*, 1984).

As previously noted, violence is a gendered social phenomenon. Research shows that males are most likely to be killed by male strangers in public places, whereas females are more likely to be killed in their homes by intimate male partners (e.g. Gartner *et al*, 1991; Abel, 1986; Howard, 1986; Edwards, 1985). Women are twice as likely to be fatally shot by an intimate or ex-intimate male partner, than by a stranger (Oprah Winfrey, 29 February 1996). Notably, the bulk of primary homicides perpetrated against females are the final outcome of a series of violent conflicts between male and female intimates over issues of male control and independence (Stark, 1990).<sup>40</sup> Indeed quarrels between heterosexual intimates are the most deadly of arguments (e.g. Howard, 1986).<sup>41</sup> It is noteworthy that women of low socio-economic status who engage in socially unacceptable gender role behaviour are at greater risk of being killed by male strangers (Gartner *et al*, 1990).<sup>42</sup>

Alcohol use has long been viewed as a contributory factor in homicide. Over the years numerous studies have supported the claim that alcohol consumption by perpetrators and victims is a catalyst to all kinds of violence (e.g. Wieczorek *et al*, 1990; Williams *et al*, 1984; Coleman, 1976; Bensing & Schroeder, 1960; Wolfgang, 1981, 1958). It is thus notable that alcohol does *not* appear to contribute significantly to firearm violence. For instance, a study of Eric County in the USA showed that gunshot victims were *less* likely to have used alcohol than other homicide victims (Abel, 1986).<sup>43</sup>

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38 See Van Den Eshof and Bergsma (1989) on Dutch victims, and Karlsson *et al* (1993) and Petersen and Gudjonsson (1990) on Scandinavian victims.

39 But firearm homicides increased significantly among white males during the nineties, see Fingerhut (1993).

40 Usually known to service providers.

41 See Hagaman (1987) on family homicides.

42 Like lesbians and sex-workers.

43 Between 1977 and 1984.

Relatively little research has been conducted on the social distribution of firearm accidents in the USA (McDowall & Loftin, 1983). However, the available evidence suggests that black, low income, younger people, especially those aged between 15 and 34, are the group most prone to gun accidents (e.g. McDowall & Loftin, 1983; Rushforth *et al*, 1974; Newton & Zimring, 1970; Iskran & Joliet, 1968). It is promising to note that the rate of accidental gun fatalities among children in the USA has been halved since 1970. Indeed, in 1993 only one per cent of the deaths of children under 15 were the result of guns (Kopel, 1993).<sup>44</sup> Another group that appears to be at risk of firearm accidents are those who handle guns without being appropriately trained or experienced, especially people who impulsively acquire firearms and those who borrow guns (e.g. McDowall & Loftin, 1986; Stenning & Moyer, 1981)

It has been shown consistently that, in the USA, firearm suicides are more common among women, whites, those over 25, unmarried people and those who suffer from depression (e.g. Lester & Frank, 1990, 1988; Lester, 1989[a], 1989[b], 1987[a], 1987[c]).<sup>45</sup> Of late, public concern has been expressed over the increasing number of teenagers who commit suicide using guns (e.g. Oprah Winfrey, 29 February 1996; Kellerman *et al*, 1992; Range & Kastner, 1988).

### **Overall Conclusion on Guns, Violence and Crime**

A decade ago academics acknowledged that, due to methodological flaws, little could be reliably concluded from the available research on the relationship between guns, violence and crime in the USA (Polsby, 1986). In 1986, Kleck concluded that "[t]he relationship between gun availability and crime and violence is still very much in doubt" (1986[a]:39). Today the situation appears to be much the same. Deriving meaningful conclusions from the empirical findings in this field, when feasible, is extremely difficult as it is not valid to merely compare the accumulated findings for and against any particular hypothesis. The use of combinations of different dependent and independent variables, across disparate time periods and a wide variety of jurisdictions, makes the findings from many studies incomparable. Furthermore, the results are often inconsistent and the majority of studies suffer from numerous procedural defects that undermine the validity and reliability of the findings. Nevertheless, it is realistic to conclude that the accumulated empirical data pertaining to the USA have not demonstrated that gun prevalence has a significant *net positive* effect on overall rates of violence including homicides, accidents and crime in general (Kleck & Patterson, 1993).<sup>46</sup> Thus:

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44 See Goetting (1990) on child victims.

45 See Crombie (1989) on suicide in Scotland.

46 But suicide is causally related to gun prevalence, see Kleck (1986[a]) and McDowall and Loftin (1986).

"[a]lthough popular accounts have suggested that the ready availability of firearms is a major factor contributing to criminal violence, empirical evidence does not support this premise" (Turner & Leyens, 1992:219).

Since guns have diverse and sometimes contradictory effects on various types of violence in different circumstances, it should not be surprising that the overall effect may approximate zero. To illustrate: when potential burglars believe that civilians are often armed with guns which they are willing to use, these offenders may begin to burgle unoccupied business premises. Such displacement may lead to a decrease in the number of homicides and injuries associated with burglaries because confrontations between burglars and victims are less likely. However, more firearms in homes may push up the rate of impulsive homicides resulting from domestic conflicts. In this hypothetical instance, a higher prevalence of guns among civilians could both decrease and increase homicides, and the overall impact on the homicide rate would depend on the relative size of each of the effects. Most of the research conducted to date has been too general and not sufficiently sophisticated to render a detailed picture of the separate effects of guns used under different circumstances. Also the focus on possession has resulted in a relative neglect of the more important question of gun *use*, and particularly which civilians use their guns against which victims, for what reasons and with what outcomes.

Despite the copious amount of research in this field our understanding of the relationship between guns, violence and crime is somewhat fragmented. However, this work has served to cast serious doubt on the core assumptions undergirding arguments for gun control. It is now apparent that gun prevalence does *not* have a simple, direct, causal effect on violence or crime, nor do firearms necessarily cause significantly more deaths and injuries. Whilst guns are potentially lethal weapons, their actual impact depends on many inter-related factors, particularly situational dynamics and the intentions of users (Kleck & McElrath, 1991). Notably then, the validity of the fundamental premises in this field can no longer be assumed.

**Table 2.1:**  
**Key Questions and Answers from Research.**

Does the availability of guns to civilians significantly affect the net rate of:	
- suicide?	- Yes
- accidents?	- No
- homicide?	- No
- robbery?	- No
- aggravated assault?	- Perhaps

## KEY GUN-RELATED INTERVENTIONS: NATURE AND EFFICACY

### **Introductory Comment**

Interpersonal violence has become an issue of international concern, particularly since the late sixties. Despite the lack of empirical evidence, it has been widely accepted that the prevalence of guns, more than other factors, is responsible for increased rates of violence among civilians (Nay, 1990). Legislative attempts to restrict and regulate the private ownership of firearms have been one of the most common violence reduction interventions made by governments the world over (Kleck & Patterson, 1993). In general, legal provisions aimed at regulating the availability or accessibility of guns to civilians have been termed gun controls and have pertained to the transfer, possession, carrying and safe-keeping of firearms. What follows is a critical overview of the main research evidence on the impact of key gun controls.

### **Legal Provisions to Limit Possession**

#### ***An Overview***

Most countries have legislated sets of provisions that prohibit certain groups of civilians from lawfully possessing firearms and impose penalties for the illegal possession of guns.<sup>47</sup> The tradition has been to limit legal gun ownership to those citizens deemed to be law abiding, as well as mentally and emotionally mature and stable. It has been common to have a minimum age requirement, usually 18 or 21, to exclude people with a history of psychological problems, mental handicaps and those who have committed violent offences or have criminal records.

Generally speaking, civilians who wish to legally possess guns require specific authorisation from a relevant state authority.<sup>48</sup> Firearms are usually marked in some way for identificatory purposes and each weapon is registered to a particular licensee. In many countries, applicants for firearm licences are required to demonstrate a legitimate need for possessing a gun such as work, sport, collecting or self protection (see Table 2.2). Some licensing procedures involve background checks to determine whether applicants meet the legal requirements, but the rigour of such screening varies greatly across countries and jurisdictions. Mandatory waiting periods have become increasingly popular in recent years. For instance, in Canada, 28 days must elapse between applying for, and being granted, a gun licence (The Department of Justice for Canada, 1994). The Brady Bill of 1993 introduced a five day waiting period for the USA (Time Magazine, 20 December, 1993). Such deliberate delays have been designed to enable more thorough background checks and to deter the impulsive acquisition of firearms. Some nations now require that applicants pass a competency test, although these vary markedly in nature and

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47 Or certain types of guns.

48 Like the police or a firearms inspectorate.

stringency. In various countries applicants for firearm licences must undergo comprehensive practical and theoretical training in the safe-keeping, handling and use of guns, and must pass practical and written competency tests.

**Table 2.2:**

**Examples of Legal Provisions on Private Gun Ownership.**

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<b>Austria:</b>	-	minimum age of 21
	-	no criminal record
	-	no history of psychological problems
	-	a demonstrated legitimate need for possessing a gun
<b>Britain:</b>	-	minimum age of 18
	-	no prison convictions in last three years
	-	deemed not to be dangerous
	-	a demonstrated regular and legitimate use for a gun
<b>Canada:</b>	-	minimum age of 18
	-	no relevant criminal record
	-	no relevant psychiatric history
	-	active membership of registered gun club
	-	two suitable referees to verify information supplied on application
	-	a demonstrated legitimate need for possessing a gun
	-	successful completion of competency test
	-	re-established need for possession every five years
<b>Denmark:</b>	-	a demonstrated legitimate need for possessing a gun
	-	no criminal record
	-	medical certificate and statement from doctor regarding mental health status
<b>France:</b>	-	no criminal record
	-	police inquiry to establish suitability of applicant

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*Sources:* PA News (27 October 1996), Reuters (16 October 1996) and The Department of Justice for Canada (1994).

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A number of legal provisions relate to the safe-keeping of firearms and are directed mainly at preventing accidents and the theft of guns. For example, when not in use, civilians may be required to keep privately owned guns in safes or special secure containers, to ensure that guns are unloaded, disassembled and/or fitted with trigger locks, and to store ammunition separately from firearms. In the UK and Australia, there has been strong support for prohibiting the keeping of guns in homes and proposals that privately owned firearms be housed at approved facilities like registered gun clubs (e.g. Neal 1989). Generally the acquisition and possession of ammunition has been regulated by law and the types and quantity of ammunition have been restricted.

Gun controls have not only addressed the possession of guns and ammunition, but also the production and transfer of these items. Firearm law has generally included provisions for controlling the manufacturing, importing, exporting, selling, purchasing and moving of guns and ammunition. Licences have usually been

required to manufacture and trade in such goods, and relatively severe penalties have been established for illegal trading, as well as for providing guns or ammunition to unlicensed persons. Furthermore, many countries have established co-operative agreements with neighbouring nations regarding the policing of international gun trafficking (e.g. Phillips, 1993; Van Duyne, 1993).<sup>49</sup>

In the USA, relatively few gun controls have been legislated at federal level and most of the main issues have been dealt with in state laws and local ordinances (Kleck, 1986[a]). It is somewhat difficult to discuss North American gun control on the whole, as there are over 20000 provisions in operation (Toch & Lizotte, 1992).<sup>50</sup> Nonetheless, it is generally accepted that US restrictions on civilian gun ownership are moderate when compared to other countries (e.g. Kleck, 1986[a]). However, interjurisdictional discrepancies in the stringency of gun controls have been identified as key factors enabling interstate gun running in North America. Firearms have been transported from states with less restrictive gun controls, to states that are governed by harsher provisions (e.g. Ewing *et al*, 1993; Time Magazine, 6 February 1989). Furthermore, US controls on dealing in firearms and ammunition have been notably lax and kitchen-table operators have proliferated (Time Magazine, 6 February 1989). In 1993, for example, an annual dealer's licence which authorised the wholesale purchasing of unlimited quantities of guns and ammunition, cost about 10 dollars and was available to anyone over 21 with a fixed address and no criminal record (Time Magazine, 20 December 1993). Availability has also been boosted by the fact that a dealer's licence has not been required for the buying and selling of second-hand guns (Time Magazine, 6 February 1989; Kleck, 1986[a]). This has proven highly problematic because the majority of firearms used in offending are purchased on the second-hand market (e.g. Wright & Rossi, 1983; Burr, 1977). Since the late eighties, these factors have been taken into consideration in designing US gun controls (e.g. Boor & Bair, 1990; Nay, 1990; Walker, 1989). In many states the cost and difficulty involved in acquiring a dealer's licence has been increased. In some jurisdictions provisions requiring that dealers be licensed at federal, state and local levels have been introduced, with stricter criteria for assessing applicants (Newsweek, 6 December 1993). Federal legislation is in the pipeline which will further restrict the interstate transfer of firearms and prescribe that all gun purchases and sales be made via registered dealers (e.g. Time Magazine, 20 December 1993).

### ***Research Evidence on Efficacy***

Methodologically sound evaluations of the impact of individual gun controls have been scarce. Perhaps the best exceptions are studies by Kleck and Patterson (1993)

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49 Similar agreements have been made between states in the USA, see Ewing *et al* (1993).

50 See Lester (1985) on state gun controls in the USA.

and Loftin *et al* (1991). In the former investigation, the separate effects of 19 different North American provisions were assessed, taking into account differential levels of enforcement. The findings showed *inter alia* that: prohibitions on the possession of guns by mentally ill persons were associated with lowered rates of suicide;<sup>51</sup> and that stricter laws on dealer licensing were associated with decreased rates of suicide, aggravated assault and armed robbery.<sup>52</sup> Loftin *et al* (1991) demonstrated an impressive reduction in both homicide and suicide rates following the implementation of restrictive gun licensing provisions and regulations for the safe-keeping of firearms.<sup>53</sup> It has also been shown that training and experience in the safe-handling of guns can reduce the likelihood of accidents (e.g. McDowall & Loftin, 1986; Stenning & Moyer, 1981). This suggests support for compulsory competency training and testing for licence applicants, and requiring that gun owners be active members of shooting clubs and be regularly re-tested for competency.

By contrast, mandatory waiting periods before the granting of firearm licences have had little appreciable impact in the 22 states where these have been implemented (Newsweek, 6 December 1993). Such waiting periods appear to be ineffective unless used to conduct thorough background checks on applicants (Kleck & Patterson, 1993). Inadequate screening has been identified as one of the main impediments to gun control in the USA: in 45 states civilians have been able to buy guns including assault firearms without being screened, simply by signing a declaration that they have no previous convictions. The Omnibus Crime Bill, passed by the US senate in late 1993, introduced a mandatory waiting period and made dealers legally obliged to run background checks on those seeking to purchase guns (Newsweek, 6 December 1993).<sup>54</sup>

### **Key Problems**

On the whole, the demonstrated impact of gun controls designed to restrict legal ownership is not very impressive. Some have argued that this is because the availability of guns among civilians is not the key factor contributing to crime and violence (e.g. Turner & Leyens, 1992). Others have contended that this lack of success is, at least in part, due to poor enforcement. Gun controls relating to possession and safe-keeping have not been strictly policed. Arrests, prosecutions and convictions solely for illegal possession or failure to safe-guard firearms have been relatively uncommon (Kleck, 1986[a]). Systematic enforcement is vital if

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51 Also see Sommers (1984).

52 Also see Blose and Cook (1980).

53 In Columbia, New England. Requiring that firearms be kept disassembled, unloaded and locked away when not in use.

54 Also see Abell (1989).



provisions designed to control possession and safe-keeping are to have the intended impact (Morgan & Kopel, 1993). To this end it has been proposed that specialist police units be set up to enforce gun control provisions, and that courts staffed by specially trained prosecutors and judges be established to deal with these types of violations (e.g. Kleck, 1986[a]; Saar, 1986).<sup>55</sup> However, such measures are costly and are not likely to be given priority in contexts where there is heightened public concern over violent crime.

## **Prohibitions on Specific Guns**

### ***Introductory Comment***

It is something of a longstanding practice for governments to outlaw the private possession of guns that are deemed to be particularly high-risk weapons. For example, as far back as 1934 the possession of fully-automatic firearms was prohibited among civilians in the USA. In most countries fully-automatics have been the first kind of firearm to be banned from the realms of civilian ownership. The rationale has been that the capacity of these weapons to discharge a large number of bullets very rapidly makes fully-automatic firearms extremely dangerous and unsuitable for sport, hunting or self defence.

In general, categories of guns have been banned because they have been viewed as constituting a particular problem at a certain time. Often prohibitive legislation has been passed in response to particularly shocking incidents involving the firearm in question. To illustrate, in Britain the recent ban imposed on all handguns over 0.22 inches was a direct governmental response to the Dunblane shooting incident in which numerous children were killed (Reuters, 16 October 1996). In the USA in 1934, sawn-off shotguns and fully-automatic firearms were outlawed because these were viewed as the favoured weapons of gangsters, and in 1968 the 0.22 inch Saturday Night Special handgun was banned as this was considered to be the weapon of criminals (Zimring, 1989; Kleck, 1986[b]; Kates, 1984[b]). In the late eighties assault firearms like the AK-47, the Mac-10 and the Tec-9 became the focus of attention in North America, particularly after the infamous Stockton schoolyard shooting in California in early 1989 (Time Magazine, 6 February 1989).<sup>56</sup> The present concern over assault weapons is due to the increased availability of these firearms and their frequent use in drive-by shootings and gang/drug-related offences (Time Magazine, 20 December 1993). Internationally speaking, in the last decade legislative debates over prohibition have been focused on two particular categories of guns, namely, assault firearms and handguns.

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<sup>55</sup> See Slothouwer (1985) on specialist prosecutors.

<sup>56</sup> In which five children were killed and 29 wounded with a semi-automatic rifle.

### *Assault Firearms*

In 1992 the Canadian government banned civilian ownership of the majority of military and paramilitary firearms and, in 1994, a number of specific guns were also outlawed (The Department of Justice for Canada, 1994).<sup>57</sup> Similarly in the USA in 1993, the Brady Bill prohibited the private ownership of 19 specified types of semi-automatic assault firearm (Newsweek, 6 December 1993). The rationale for prohibiting civilian ownership of combat weapons overlaps with the reasoning for banning fully-automatic guns: assault firearms are considered to be high-risk mainly because of their large magazines and capacity to fire many bullets in rapid succession (Robin, 1991). Although most of these guns were originally designed to operate as semi-automatics, they can be easily and cheaply modified to function as fully-automatics (Time Magazine, 6 February 1989). In short, assault firearms are designed for killing. It has been argued that although not yet widely used in crime, given their increased availability and relatively low cost, it is only a matter of time before offenders begin to make more frequent use of these extremely lethal weapons (Oprah Winfrey, 29 February 1996; Newsweek, 6 December 1993).<sup>58</sup>

Whilst there has been relatively little public resistance to the banning of assault firearms, there has been some debate over the optimal legislation (e.g. Morgan, 1990). It is necessary not only to prohibit the possession of certain types of high-risk firearms, but also the importing, manufacturing and selling of these guns and their components (Morgan & Kopel, 1993; Zimring, 1989; Kleck, 1986[a]). There has been controversy over the legal definition of assault firearms and it has proven difficult to construct a definition that accurately distinguishes between some types of semi-automatic hunting rifle and paramilitary assault firearms (Time Magazine, 6 February 1989). Laws like the Brady Bill, in which guns are simply listed by name, have been heavily criticised because this does not prevent the substitution of similar firearms (e.g. Morgan & Kopel, 1993; Zimring, 1989). It has been proposed instead that a legal definition be devised that prohibits firearms with certain mechanical attributes such as magazines over 15 rounds and semi-automatic firing capacities (Zimring, 1989). This is the approach which has recently been taken by the Canadians and the Australians.<sup>59</sup> In Canada, civilian acquisition of semi-automatic handguns with magazine capacities over 10 shots, and centrefire semi-automatic rifles and shotguns with magazine capacities over five shots, has been outlawed (The Department of Justice for Canada, 1994). Exemption may be granted on the grounds of sporting needs and the so-called grandfather caveat has been applied to certain gun types. The latter permits current owners to retain possession

57 Including the Ruger mini-14, the Colt AR-15, all variants of the Kalashnikov, the AK-47 and the Tec-9.

58 In the USA about 10% of crimes involved assault firearms which comprised three per cent of privately owned guns, see Zimring (1989) and Kassirer (1993).

59 Although the Canadian legislation includes a list of specified firearms.

but outlaws the transfer of ownership or the acquisition of new weapons. In Australia, civilian possession of self-loading firearms was banned in July 1996, after an incident in which 35 people were killed with a semi-automatic gun (Reuters, 16 October 1996).

### *Handguns*

The lobby to outlaw civilian handgun ownership has grown in recent years. In countries like Canada, the USA and the UK the key argument for the prohibition of handguns has been the frequent use of these firearms in the commission of offences (Time Magazine, 20 December 1993; Kleck, 1986[a], 1984). At present, the 9mm semi-automatic pistol is the most common privately owned handgun in North America (Oprah Winfrey, 29 February, 1996). While civilians have tended to use long-guns mainly for legitimate ends like hunting and culling, handguns have been employed for a variety of purposes including the commission of crimes (Esqueridge, 1986; Robin, 1991 resp.). In most nations there has been substantial and organised public opposition to the proposed banning of handguns, most notably in the USA and recently in the UK (Time Magazine, 20 December 1993; Reuters, 16 October 1996 resp.). In North America, the infamous National Rifle Association (NRA) with a membership of over three million, has successfully opposed bids to outlaw handguns, especially those promoted by the opposition; the 200000 strong organisation, Handgun Control Incorporated (Time Magazine, 20 December 1993). In Britain recent polls have shown that 70% of adults favour a ban on handguns, but there has been significant opposition from the British Shooting Sports Council and the Sportmen's Association of Great Britain and Northern Ireland, which have threatened to constitute a political party to oppose the prohibition of handguns (Reuters, 13 October 1996; PA New, 27 October 1996 resp). Nevertheless in 1997 the British government passed legislation outlawing all handguns over 0.22 inch calibre and a complete ban seems probable in the near future (The Mail on Sunday, 24 August 1997).

The Canadian government has dealt with public resistance by gradually introducing prohibitions on more and more categories of handguns -- small calibre handguns, those with short barrels and semi-automatics with magazine capacities over 10 shots -- and today the bulk of handguns have been effectively outlawed (The Department of Justice for Canada, 1994). Handgun ownership is limited mainly to collectors, target shooters and those requiring firearms for work purposes (Sproule & Kennett, 1989). The Australian government has managed to ban all semi-automatic handguns, probably because the firearm of choice in this country is the long-gun (Neal, 1989).

### ***Key Problems***

There are numerous problems associated with prohibitions on the ownership of handguns by civilians, but enforceability has been raised most frequently (Mellor in Reuters, 16 October 1996; Morgan & Kopel, 1993). Given the characteristically poor enforcement of gun controls by the police and courts, the efficacy of handgun bans depends largely on the voluntary compliance of civilians. However, this is unrealistic in countries where there is strong public opposition. In fact, in the USA talk of handgun bans has typically resulted in gun buying frenzies and according to polls, 75% of North Americans maintain that they will not give up their handguns even if these are outlawed (Toch & Lizotte, 1992:235).

The second major disadvantage of handgun prohibition is the enormity of the cost of compensation that is generally offered for firearms (e.g. Hasko, 1986[b]). To illustrate: the recent compulsory surrender of handguns in Britain cost the government around 150 million pounds in compensation (The Mail on Sunday, 24 August 1997). An alternate approach is the use of the so-called grandfather clause which has been employed by the Canadian government. In effect, this means that only new acquisitions of certain firearms are prohibited. Those who already possess guns that are to be banned are permitted to retain these weapons but are prevented from transferring ownership. The problem with this approach is that large numbers of guns remain in circulation for lengthy periods.

One of the unintended consequences of handgun bans is the stimulation of the black market in illegal firearms. Nigeria provides one of the best examples: the Firearms Act 7 of 1958 of the Federal Republic of Nigeria and Lagos made it illegal for civilians to possess guns and for firearms to be manufactured, imported, bought or sold in this country. However, a lucrative market in illegal guns subsequently developed and, by the mid-eighties, armed robbery had reached an all time high. The upward spiral in this offence was explained as follows: "[r]obbers are emboldened ... because they have a monopoly of arms while their victims do not have" (Adinkrah, 1986:67). Thus, even if a handgun prohibition is successful, it generally serves to remove firearms from law abiding civilians rather than criminals, and if such bans were to reduce the availability of handguns to lawbreakers, it is probable that long-guns would be substituted (Kleck, 1986[a]). The barrels of long-guns can be shortened to make these weapons more manageable and concealable. Since long-guns, particularly those with shortened barrels, are more lethal than handguns, a substitution of modified long-guns would likely exacerbate violence associated with crime (Kleck, 1986[a]). It has also been demonstrated that reductions in the availability of firearms to would-be robbers, results in displacement from less to more vulnerable targets, thus shifting "... the burden of robbery from those best able to bear it to those least able to do so" (Kleck, 1986[a]:38). Hence, if legal prohibitions on guns did decrease the number of firearms in offenders' hands,

this could lead to an increase in one-on-one robberies and muggings, particularly those involving more vulnerable victims like the elderly and women (e.g. Kleck, 1986[a]; Cook, 1979, 1976). Similarly, since women commonly use handguns in self defence against men, and older men against younger men, preventing these groups from possessing guns may leave them particularly prone (e.g. Kleck, 1986[a]; Howard, 1986). All factors considered, it seems that outlawing civilian ownership of handguns is something of a "blunderbuss approach" (Kleck, 1986[a]:40).

### ***Research Evidence***

Prohibiting the possession of particularly destructive firearms, like those with large magazines and rapid firing capacities, appears to be a worthwhile legal intervention if consistently enforced. But considering the unintended negative consequences, it seems to be neither feasible nor desirable to ban the private ownership of firearms or even handguns. The evidence suggests that the most workable and effective gun control has been the prohibition of ownership by those who are prone to violence. It has been empirically demonstrated that not everyone is similarly likely to perpetrate serious violence and that "... people who are seriously violent in the present almost invariably have been seriously violent in the past" (Jackson, 1989; Kleck, 1986[a]:40 resp). The effective enforcement of selective prohibition requires the accurate and efficient identification of people who are violence prone. In this regard, minimum age specifications are appropriate. Those who have been convicted of violent offences and fugitives from justice constitute a second high-risk group that is relatively easy to distinguish using criminal records, especially when this information has been computerised. However, at best this method serves to identify only about half of the actual high-risk group as it neglects violent people who have not been convicted (Kleck, 1986[a]). Perpetrators of so-called domestic violence are of particular concern here as relatively few are convicted.<sup>60</sup> A third group, which has commonly been excluded from gun ownership by law, are those who have histories of psychiatric or psychological problems. It has been argued convincingly that this is a problematic category. Since psychiatric records are not generally accessible to the police, it is difficult to conduct proper checks on gun licence applicants. Furthermore, only a small proportion of those who have experienced psychological difficulties are likely to be prone to violence (Kleck, 1986[a]; Blose & Cook, 1980). In order to screen and exclude certain applicants for firearm licences it has been proposed that a computerised database be established of persons admitted to psychiatric facilities for their violent behaviour or risk of suicide. (Kleck, 1986[a]).

There have been few sound, empirically based evaluations of the impact of banning certain types of guns. However, Kleck and Patterson reviewed the

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60 See Chappell (1992) on protection orders and guns.

accumulated findings and assessed numerous gun control provisions. They concluded that:

"... even fairly strong measures such as banning sales of 'Saturday night Specials' and de facto bans on handgun possession appear generally to exert no negative effect on violence rates" (Kleck & Patterson, 1993:282).

The collective evidence suggests that the following basic gun control provisions can have a violence reducing impact: licensing requirements for civilian owners combined with thorough background checks, stricter criteria for gun dealers, and prohibitions on the ownership of guns by those with criminal records and histories of mental illness (Kleck & Patterson 1993).

### **Gun Carrying Provisions**

Legal provisions that restrict the carrying of firearms have generally been aimed at reducing accessibility rather than possession. In some countries the carrying of loaded firearms has been outlawed unless necessary for work purposes. For instance, special authorisation is required for civilians to carry guns in the Netherlands, and in Canada loaded firearms may not be transported and guns may only be loaded in a place where it is lawful to discharge them (Slothouwer, 1985; The Department of Justice for Canada, 1994 resp). By contrast, only a minority of the states in the USA have specifically disallowed the carrying of loaded guns and many of these prohibitions apply only to younger persons (The Center for the Prevention of Handgun Violence, 1993; Hawley, 1993).

There is some empirical evidence suggesting that the introduction of a legal prohibition on the carrying of loaded firearms can produce a short term reduction in rates of gun assault and armed robbery (e.g. Walker, 1989; Jung & Jason, 1988). But it has also been found that the firearm homicide rate has not increased significantly in areas where the carrying of guns has been legalised (e.g. Cramer & Kopel, 1993). Overall, it seems that if prohibitions on the carrying of firearms are consistently enforced, these may have some reductive impact on violence (Kleck & Patterson, 1993).

### **Civil Liability**

It has been suggested that dealers be held civilly liable for consequent damages if they supply guns or ammunition to unauthorised persons, or if they fail to conduct adequate background checks on their clients (Kleck, 1986[a]). This has been viewed as a way of enhancing the enforcement of legal prohibitions on civilian gun possession. Similarly, it has been proposed that firearm manufacturers be held civilly liable for avoidable injuries caused by their products (e.g. Turner & Leyens,

1992; Turley, 1982).<sup>61</sup> The legal rationale here is that manufacturers have a duty to minimise the dangers associated with the guns and ammunition they produce and ought to be held legally accountable if they fail to do so, e.g. in the case of accidents in which children handle guns not fitted with adequate safety mechanisms. This notion has prompted discussion around the development of standard features for firearms such as child-proof locks and indicators showing when firearms are loaded (e.g. Kassirer, 1993).

### **Harsher Penalties**

Like restrictive licensing provisions, increased penalties for firearm-related offences have been a standard gun control strategy in most countries (Nay, 1990). This approach, which is based on the highly controversial premise that punishment deters lawbreaking, has generally involved three kinds of intervention: (1) the introduction of a mandatory minimum prison sentence for offences in which an offender has been armed with a gun;<sup>62</sup> (2) increasing the penalties for violations of legal provisions pertaining to the possession, safe-keeping, carrying, manufacturing, and transferring of guns and ammunition, and/or offences committed using firearms;<sup>63</sup> and (3) restricting parole and probation for those serving prison sentences for firearm-related offences.<sup>64</sup> Numerous authors have concluded that none of these interventions significantly reduces crime or violence (e.g. Toch & Lizotte, 1992; Robin, 1991; Nay 1990; Walker, 1989; Stout, 1989; Jung & Jason, 1988).<sup>65</sup> After rigorous evaluation, Kleck and Patterson (1993) have stated that there is some indication that rates of armed robbery decrease following the introduction of harsher penalties for the use of a firearm during a robbery, and mandatory prison sentences for illegal carrying.<sup>66</sup> Furthermore, Nay (1990) compared 26 countries and showed that, when gun control provisions are enforced consistently, heavier penalties for the illegal possession of firearms can have a significant deterrent effect.

Inconsistent application by the police, prosecutors and courts appears to be the main impediment to the efficacy of harsher punishment for gun-related offences (Toch & Lizotte, 1992). The already overloaded prison system in North America has been noted as a key contributory factor. Studies have revealed that the police tend to selectively report the involvement of guns in offences, that prosecutors use

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61 See Smith (1987) on the ultrahazardous activity doctrine and Boser (1992) on strict liability.

62 Canada has a four-year minimum prison sentence for selected firearm offences, see The Department of Justice for Canada (1994).

63 In California, one extra year for being armed with a gun during an offence, two extra years for shooting and three extra years for a sexual offence with a gun. See Reuters (16 October 1996), The Department of Justice for Canada (1994) and Lizotte and Zatz (1986).

64 See Morgan and Kopel (1993), and Saar (1986).

65 Also see Stout (1989), Lizotte and Zatz (1986) and Carlson (1982).

66 Supported by McPheters *et al* (1984) and Deutsch and Alt (1977).

the threat of heavier sentences as a lever in plea bargaining, and that the Courts either ignore additional sentencing requirements or acquit accused rather than handing down longer prison sentences (e.g. Toch & Lizotte, 1992).

### **Gun Control 'Packages'**

It is being recognised increasingly that the complexity of the issue of gun-related violence and crime necessitates a multifaceted programme of interventions. In 1988 a National Commission on Violence was established in Australia to examine causes and propose interventions. Interjurisdictional disparities in legal provisions were identified as a key obstacle to effective gun control (Chappell, 1992; Chappell *et al*, 1988). Hence the Commission's main objectives were to develop a national gun control strategy, to create national uniformity in firearm policy and to reduce the civilian arsenal. However, only some of the comprehensive set of recommendations were accepted for implementation,<sup>67</sup> and the Australian government was heavily criticised for not going far enough (Peters & Eggers, 1991). Nonetheless the 1991 National Strategy is an example of a broader and more strategic approach to the firearm issue (see Table 2.3).

**Table 2.3:**  
**Selected Aspects of Australia's 1991 National Gun Control Strategy.**

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*	Confirmation of existing prohibitions on the importation and possession of fully-automatic firearms.
*	Prohibition on selling military-style, semi-automatic, non-military and self-loading firearms.
*	New standardised and more stringent gun licensing procedures.
*	Legal provisions detailing the circumstances in which gun licences must be cancelled and weapons confiscated.
*	Empowering police to confiscate firearms from people who have protection orders against them.
*	Further restrictions on the sale of ammunition.
*	Additional requirements for the safe-keeping of privately owned guns.
*	A legal obligation on gun sellers to ensure that buyers are authorised.
*	Amnesties from prosecution for the voluntary surrender of illegal guns.

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*Source:* Chappell (1992).

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The Canadian government has adopted a more comprehensive and longer term strategy concerning civilian gun ownership and the social problem of firearm-related crime and violence. From 1976 onwards, a carefully planned 'package' of legislative reforms pertaining to private firearm possession was introduced including inter alia: stringent national licensing and screening procedures for applicants, the

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<sup>67</sup> By the Special Premiers Conference of 1991.



registration of guns, the prohibition of several categories of firearms, increased penalties for gun-related offences and violations of gun control provisions, stricter requirements for the safe-keeping and handling of firearms, and additional regulations on trading (The Department of Justice for Canada, 1994). Between 1980 and 1983 the impact of these reforms was systematically assessed and, according to various authorities, the results were most promising (e.g. The Department of Justice for Canada, 1994; Hung, 1993; Sproule & Kennett, 1989; Sloan *et al*, 1988). The proportion of offences committed with firearms was found to have decreased along with rates of suicide and gun-related accidents. Furthermore, the overall homicide rate was said to have dropped due to a reduction in the rate of firearm homicides. On the negative side, however, this evaluation showed that the overall robbery rate had not decreased and that there had been a substitution of weapons in robberies (The Department of Justice for Canada, 1994).

It is not only the favorable outcome of the Canadian reforms that is impressive but various aspects of the strategy: the interventions were informed by sound empirical research data; the impact of the strategy was systematically evaluated; the legislative reforms were introduced gradually over a period of time; the changes were widely publicised and combined with public education around the issue of safe and responsible civilian gun ownership and use; and the enforcement of gun control provisions was improved (The Department of Justice for Canada, 1994). Notably, the public and incremental nature of this approach appeared to reduce civilian resistance to the banning of many types of handgun. The demonstrated success of legislated gun controls in Canada stands in stark contrast to findings indicating that similar interventions have had little significant impact on gun-related crime and violence in North America. Such differential effects have been attributed primarily to the stringency and interjurisdictional uniformity of gun controls in Canada, the consistency of enforcement and cultural attitudes to violence (e.g. Hung, 1993; Sproule & Kennett, 1989).

### **Civilian Attitudes**

Some authors have emphasised that differences in civilian attitudes to gun ownership and use are a key factor shaping compliance with gun controls and violent behaviour more generally (e.g. Kopel, 1992). Disparities in rates of gun-related violence and crime have often been linked to variations in cultural attitudes. Perhaps the most frequent comparison has been between the UK and the USA. It has been contended that the cultural attitude that private gun ownership is a privilege rather than a right accounts, at least in part, for the comparatively low prevalence of firearms in Britain (e.g. Neal 1989). By contrast, in North America firearm ownership is viewed as an inalienable constitutional right (e.g. Halbrook, 1986, 1984; Kates, 1986, 1984[a]). Indeed, the second amendment to the American Constitution states that "[a] well

regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed". Although no federal court in the USA has yet invalidated gun control law on the basis of the second amendment, this clause has been effectively employed as a key element of the NRAs anti-prohibitionist propaganda in which gun control has been cast as undermining civil rights (Russell, 1995). Certainly this extremely powerful political movement has expanded and reinforced belief in the right to possess firearms. NRA tactics have included inter alia, support for political candidates who oppose gun control, harassment of prohibition advocates and extensive public relations campaigns against gun control (e.g. Davidson, 1993; Kassirer, 1993; Langbein & Loftus, 1990). However, recent polls have indicated that the NRA is losing ground and that the proportion of North Americans who support a federal ban on handguns has increased substantially (e.g. Kassirer, 1993). Nevertheless, anti-prohibitionist movements can be powerful forces shaping civilian attitudes to gun ownership and, hence, must be taken into account in designing gun-related interventions.

Despite the lack of support, interventions aimed at decreasing civilian gun ownership generally rest on the dubious premise that gun prevalence significantly increases rates of crime and violence. It would be preferable instead, to base violence reduction strategies on an understanding of factors affecting gun *use* rather than ownership. Indeed many contend that internalised controls, like attitudes, are stronger deterrents of violent behaviour than external prohibitions (e.g. Kopel, 1992; Lester & Slothouwer, 1985). However, relatively little empirical work has been conducted in this vein. There has been some investigation of attitudes to gun use among civilians in different countries. For instance, it has been shown that the majority of both North Americans and Canadians are of the opinion that it is legitimate to use firearms for the protection of loved ones and property (e.g. Mauser, 1990). Unfortunately, the effects of such attitudes on actual gun use have not been explored systematically. Research evidence has indicated that boosting public confidence in a state's ability to deal effectively with crime and violence appears to be a more effective means of decreasing gun prevalence than legislated gun controls (Young *et al*, 1987; McDowall & Loftin, 1986). Also, reducing firearm ownership among one generation of adults is likely to reduce possession in the next (e.g. Wright *et al*, 1983).<sup>68</sup>

Recommendations to modify the ways in which firearm use is depicted on television and in films have become increasingly common as an intervention for reducing gun-related violence (e.g. Reuters, 16 October 1995; Morgan & Kopel, 1993; Chappell *et al*, 1988; Chappell & Graham, 1985).<sup>69</sup> Such proposals rest on a rather substantial body of empirical research on the relationship between aggressive

68 Adults are more likely to own firearms if their parents had guns when they were children.

69 The UK, the USA, Australia and Canada resp.

behaviour and the viewing of media violence. Although there is ongoing controversy over the conclusions that may be drawn from the accumulated evidence in this field,<sup>70</sup> it is generally agreed that children who watch more television violence exhibit increased aggression (e.g. Freedman, 1992; Huesmann *et al*, 1992). Furthermore, it has been demonstrated consistently that aggression is learned as a preferred way of solving problems at an early age and, unless modified, becomes increasingly impervious over time (e.g. Huesmann *et al*, 1992; Huesmann *et al*, 1983). For this reason, gun use should *not* be depicted on television or in films as the preferred and most effective means of resolving problems, and safety and restraint in firearm use ought to be emphasised. Notably, some success has been reported in teaching children to view inappropriate portrayals of violence in the media as ineffective solutions to real life problems (e.g. Huesmann *et al*, 1983). Similarly, programmes designed to teach non-violent conflict management skills to scholars have become popular (e.g. Bell, 1987). Another encouraging finding has emerged from work on the weapons-effect. It has been shown that aggressive responses to guns can be successfully modified by a process known as "decentration" which involves shifting attention from the destructive to the aesthetic qualities of firearms (Turner & Leyens, 1992:218; Leyens *et al*, 1976 resp). Such findings would seem to be of value in devising public education programmes for changing attitudes to guns.

### Structural Factors

Legislative and other criminal justice interventions aimed at reducing gun-related violence have failed to address the underlying social, political and economic factors that predispose people to violent behaviour (e.g. Kopel, 1993; Kaplan, 1986; Kleck, 1986[a]; Bailey, 1984). It has been established that relative economic deprivation is the best predictor of rates of homicidal violence in the USA, and that unemployment is strongly associated with heightened levels of violent behaviour (e.g. Lester, 1987[a]; Brenner & Swank, 1986; Messner, 1982; Huff-Corzine *et al*, 1991; Baron & Straus, 1988; Kleck, 1986[a] resp).<sup>71</sup> Hence, decreasing poverty, unemployment and inequality ought to be adopted as central violence reduction strategies. In short, conditions that make people feel that life is of little value need to be understood and changed (Kopel, 1993). In the words of Kleck,

"... it is ridiculous to suggest that we must rely on gun control laws, or indeed, any strategies using criminal law or the criminal justice system, to reduce violence ... To accomplish a significant reduction in violence will require a return to serious consideration of the fundamental social and economic causes of violent behavior, a course which criminologists have repeatedly advocated for decades" (1986[a]:61).

70 Chiefly whether the findings support a causal relationship between the variables. Also see Freedman (1992) and Huesmann *et al* (1992).

71 Also see Krahn *et al* (1986) on homicide and income inequality internationally.

However, governments have frequently dismissed such proposals on the basis of the expense involved, an apparently irrational response in view of the exorbitant costs of firearm violence and traditional gun controls. For instance, it has been estimated that gun violence costs the US economy around 15 billion dollars p.a. (Time Magazine, 20 December 1993:25). The financial consequences include factors such as medical treatment for gunshot casualties,<sup>72</sup> loss of earnings and alternate support for dependents of victims and perpetrators, and the expense involved in apprehending, trying and punishing offenders (Neal, 1989).<sup>73</sup>

### Overall Conclusion

Since the early eighties numerous scholars have evaluated the accumulated research evidence on the impact of legal interventions aimed at reducing gun possession among civilians in the USA (e.g. Kleck & Patterson, 1993; Toch & Lizotte, 1992; Turner & Leyens, 1992; Walker, 1989; Kleck, 1986[a], 1984; Wright *et al*, 1983). Notably, there seems to have been little change in the prevailing academic opinion over the past decade. To illustrate, the following denouement was made in 1983: "... the probable benefits of stricter gun control (itself a nebulous concept) in terms of crime reduction are at best uncertain, and at worst close to nil" (Wright *et al*, 1983:22). Compare this with the well substantiated 'verdict' reached a decade later: "[t]aking prior research as a whole, it would be fair to say at this point that a consistent, credible case for gun control efficacy in reducing violence has not yet been made" (Kleck & Patterson, 1993:255). Hence, the following advice appears to be most judicious, at least in relation to the USA: "[i]n the absence of more clear-cut evidence, we have no basis for recommending efforts to restrict the availability of guns as a means of reducing the rate of criminal violence" (Turner & Leyens, 1992:219). However, the efficacy of legislated gun controls appears to be context dependent and considerable variations have been reported across countries. Some gun-related interventions have yielded consistent and significant reductions in violence in Canada, yet appear to have had little impact in the USA (e.g. The Department of Justice for Canada, 1994; Hung, 1993; Mundt, 1993, 1990; Sproule & Kennett 1989). This underscores the importance of conducting context specific assessments of violence reduction strategies.

In North America, the reduction of gun-related violence has been stymied primarily by a failure to recognise the complexity of the link between guns and violence. Arguably the key lesson to be learned from over thirty-five years of research in this field is that the issues must be systematically disaggregated (Toch &

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72 Estimated at about one billion dollars p.a, see Time Magazine (20 December 1993).

73 Mandatory third party insurance for licensed gun owners is one way of reducing the State's financial burden re gun violence, see Chappell (1992).

Lizotte, 1992). It is also imperative to shift focus away from gun availability and to develop a comprehensive understanding of when, how, why and by whom firearms are actually used. This would provide a more sound basis for the development of effective interventions.

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## CHAPTER THREE

### LITERATURE REVIEW PART II:

#### Civilians and Guns in South Africa

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#### INTRODUCTION

Considering the vast amount of work which has been conducted on a wide range of topics relating to civilians and guns, particularly in the USA, the most striking feature about such research in the South African context is its paucity. This is somewhat surprising as South Africa has high rates of private gun ownership, crime and violence; factors that have been associated with the development of this field in other countries. From about 1984 through to the early nineties this country was wracked by a violent civil war over Apartheid. But even since this conflict formally ended, violence has prevailed and crime rates have sky-rocketed (The Minister of Justice in: Hansard, 10 May 1995). Indeed contemporary South Africa has been deemed the most violent nation and the second most heavily armed country in the world (The Argus, 7 September 1993; Hansard, 10 May 1995:786 resp).<sup>1</sup>

Whilst a great deal was written on the political conflict, until recently the specific role played by firearms and most forms of non-political violence were relatively neglected.<sup>2</sup> Overall, very little scholarly attention was paid to the use and abuse of guns by civilians in South Africa between 1960 and 1990.<sup>3</sup> Only a handful of pertinent writing was found in the literature survey conducted for this dissertation. Empirical studies have been particularly scarce and most of the work has comprised theoretical commentaries on the law pertaining to private gun possession. Unlike related work in other countries, the South African focus has been narrow, and pivotal matters have been neglected. There has been very little research on critical issues such as the validity of the basic assumptions undergirding gun control, the impact of different interventions, characteristics of civilian gun owners, motivation for possession, the circumstances in which civilians fire guns and the outcomes of armed confrontations.

Although academic literature on this topic is sparse, official statistics on civilians and guns are relatively abundant. In fact there is an array of numerical data on the legal and penal systems in this country, some of which dates back to 1910 when Jacob De Villiers Roos, the first Secretary of Justice and Director of Prisons, introduced the practice of state agencies producing detailed and largely quantitative annual reports (Van Zyl Smit, 1990). Over the years of Nationalist rule, this

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1 After the USA.

2 Attention is now being focused on all forms of violence.

3 Although much has been written on the police and guns, see Chapter Four.

practice became entrenched and a Central Statistical Service (CSS) was established specifically to produce a wide range of official statistics on a regular basis. The following publications generally included various figures on the topic of civilians and guns: the annual reports of the Commissioner of Police, the Departments of Justice and Correctional Services, the CSS publications on statistics of offences and national mortality, and the section of parliamentary debates in which members answer specific questions that have been posed.<sup>4</sup> While these data are problematic in many respects, some have proven useful especially in fields where research has been limited (e.g. Hansson, 1988). Since the official statistics available on civilians and guns were somewhat fragmented, pertinent data were compiled for inclusion in this chapter.

## A CRITICAL OVERVIEW OF ACADEMIC RESEARCH

### Private Gun Ownership and Control

Over the past 25 years there has been very little academic work on the topic of gun control in South Africa (Hansson, 1990). Scholarly writing in this field has been dominated by theoretical appraisal of various aspects of the law pertaining to firearms (e.g. Cowling, 1993; Jagwanth & Thipanyane, 1993; Sarkin & Varney, 1993; Van Rooyen, 1978). In general, the validity of the basic premises undergirding gun control have been assumed rather than empirically tested, and the impact of legislative controls has not been systematically assessed. However, two texts written during the seventies stand as notable exceptions: the first comprises an empirical evaluation of the efficacy of legislated administrative controls on the private possession of firearms in South Africa before 1973 (Zazeraj, 1973). The second was a submission to the South African Law Commission on the question of whether to create the offence of negligent injury with a firearm, and included a critical assessment of criminal sanction as a strategy for controlling gun abuse (Van Rooyen, 1978).

In South Africa, as in most countries, gun control has been premised on two basic assumptions: (1) that decreasing the availability of firearms to civilians significantly reduces the use of guns in crime, and (2) that the availability of firearms can be effectively reduced by legally restricting gun possession among civilians. In the early seventies, Zazeraj used national mortality and conviction statistics to test these hypotheses in relation to South Africa (1973). Importantly, this study revealed that knives constituted "a far greater threat to public safety" than firearms. To illustrate: in 1967 firearms were responsible for six per cent of all homicides, while stabbings accounted for 60% (Zazeraj, 1973:93). The research concluded further that the widespread possession of unlicensed guns clearly demonstrated the *inefficacy* of restrictive firearms legislation. Strategies designed to

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4 In publications known as Hansards.

reduce crime by limiting the number of licensed guns were doomed to failure because offenders generally prefer *unlicensed* firearms.<sup>5</sup> Since legislated gun controls do not prevent unlicensed possession, these are also unlikely to reduce firearm accidents or suicides. The overall conclusion reached was that:

"... there is no direct and measurable relationship between the presence of firearms in society and their use in crime on the one hand, and the adoption of restrictive firearms legislation. ... Crime, and particularly violent crime, involves very much more than the private possession of firearms, and the restriction on their possession to only 'fit and proper persons' neither lessens the crime rate, nor does it make the attacks on innocent people less deadly" (1973:95 & 103).

Remarkably this author stressed the *meaning* of firearms rather than their availability and rejected the traditional approach to gun control that was dominant throughout the Western world at this time.<sup>6</sup> Instead of proposing increased restrictions on lawful gun ownership by civilians, Zazeraj promoted the relaxation of legal controls combined with stricter penalties for illegal possession and unlawful use, challenging policy makers:

"... to acknowledge that laws should be based on empirically derived requirements rather than untested assumptions. ... [O]n these grounds firearms control laws in particular are questionable in principle" (1973:117).

This early study is problematic for numerous reasons, perhaps the most serious being the under-representation of Africans in the statistics that were used. Indeed this piece of research appears even more flawed when viewed from a contemporary perspective and many of the results have since been contradicted. For instance, there is now consistent evidence showing that reducing the legal availability of guns lowers the suicide rate.<sup>7</sup> But even though Zazeraj's actual findings are of dubious validity, his study remains a significant contribution to the South African field because it is a rare example of a critical evaluation, using empirical data, of the basic assumptions of gun control.

Van Rooyen's submission to the South African Law Commission in 1978 is another of the few critical pieces in this field. In commenting on the proposed introduction of a new firearms offence, this author examined the broader issue of the efficacy of criminal sanction in controlling firearm abuses. In direct contrast to Zazeraj (1973), he argued for a shift in focus away from punishment toward improved administrative licensing controls; proposing the introduction of more

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5 Because they are more difficult to trace. Also see Greenwood (1972) on the UK.

6 Although some dissenters had emerged, like Greenwood (1972) in the UK and Miller (1973) in the USA.

7 See Chapter Two.



stringent gun licensing requirements based on the criteria of knowledge, proficiency, safety and proven need that were being used in Germany at this time. According to Van Rooyen (1978), these were particularly relevant concerns for South Africa considering that 80% of licensed gun owners had never fired their guns (The Rand Daily Mail, 26 January 1978). Overall he argued that, in dealing with the firearms issue, South African policy-makers had generally rushed to criminal sanction without adequate consideration of alternate interventions or subsequent evaluation of their impact, and advised therefore that:

"... we should no longer rely blindly upon the use of the criminal sanction to 'solve' our social problems, but that we should thoroughly investigate alternative means of social control. In short, our approach should be to prevent, not merely to punish" (Van Rooyen, 1978:23).

Most notably, this author emphasised that the deterrent efficacy of criminal sanction on firearm-related offending was an unsubstantiated assumption and that evaluative research was urgently required in this field.

Regrettably, however, such work was not forthcoming and even by the mid-nineties crucial issues -- like the examination of basic assumptions, impact studies and the exploration of preventative interventions -- were all but neglected. During the eighties there were very few academic publications on the topic of gun control in South Africa but the nineties are seeing a kindling of scholarly interest in the issue. Indeed, a pioneering empirical investigation was published in 1990 which pointed to inconsistent enforcement by the Courts of legal provisions on the use of deadly force, as the key impediment to the prevention of firearm abuse in this country. In the author's words:

"... despite the law, people use guns with little restraint and furthermore, they do not face certain or serious legal sanction for doing so. When determining liability the legal system is failing to apply controls strictly and consistently when firearms are used to kill. In effect this means that a high level of restraint is not required on the part of those who use deadly force in order for their actions to be deemed lawful and hence, for such persons to avoid legal sanction" (Hansson, 1990:ii).

Interestingly, the approach to intervention proposed in this work rejects legislated prohibitions on private gun ownership as the key means of reducing firearm abuse, and promotes attitudinal change as the primary objective of gun control. In sum the author argued that: "... instead of trying to prevent people from possessing guns, the short term aim should be to train as many people as possible to use guns with greater restraint. In the long term, the goal should be to reduce the public's desire to possess and use firearms" (Hansson, 1990:114).

In 1993 a leading South African journal published a special focus on the law pertaining to the private ownership, carrying and safe-keeping of guns. One of these three articles was a review of the Arms and Ammunition Act along with proposals

for a range of legal reforms (Jagwanth & Thipanyane, 1993). The approach taken to gun control in this paper was focused on improving the administrative management of firearm ownership using the following kinds of interventions: the establishment of a committee to periodically review firearm legislation, the introduction of more stringent and standardised criteria for deciding gun licence applications, the development of scientific systems for testing applicants, restrictions on the quantity of ammunition and the number of guns that may be legally possessed by individuals, stricter controls on the borrowing and carrying of guns (Jagwanth & Thipanyane, 1993).<sup>8</sup> This approach is discordant with those taken by Zazera (1973) and Hansson (1990), but in keeping with Van Rooyen's (1978) perspective. Furthermore, in stark contrast to these earlier writers, the work of Jagwanth and Thipanyane (1993) is marred by an uncritical acceptance of the dubious assumption that there is a causal link between the availability of guns and the rate of violence in society. According to these authors their:

"... article is based on the *presumption* [added emphasis] that easy availability of firearms is a major factor contributing to violence and aggression. ... It is essential that excessive availability of firearms be reduced as a means of curtailing escalating violence. By means of more stringent legislation and harsh penalties being imposed for unlawful possession of arms, a general disarming of society towards achieving the end of non-violence is possible" (Jagwanth & Thipanyane, 1993:22 & 28).

A second paper in the aforementioned triad provided an evaluation of the law on carrying dangerous weapons, discussed in the context of the political conflict in South Africa (Sarkin & Varney, 1993). The authors maintained that this aspect of the law had become chaotic and should be simplified considerably to prohibit, in general, the carrying of dangerous weapons in public. They also stressed that the efficacy of new prohibitions depended on the consistency and stringency of police enforcement.

The third and final article in this group was an examination of the legal requirements for the safe-keeping of firearms (Cowling, 1993). The central point raised in this paper was that legislative amendments had raised the standard of care required of legal gun owners to a level that was unfair and unrealistic if strictly applied. According to the author, it is "... counterproductive to demand a standard of perfection within the context of caring for firearms that is beyond the reach of the ordinary possessor" (Cowling, 1993:37). He thus suggested that when the Courts applied the standard they took account of the fact that civilians needed guns to protect themselves.

Together, these three journal articles reflect an approach to gun control that is characterised by a legalistic orientation, a neglect of critical evaluation in relation to

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8 And that amendments awaiting commencement be implemented forthwith.

underlying assumptions and an over reliance on legal reform as a means of reducing firearm-related violence. However, an alternate and promising approach to firearms emerged later in 1993 in a paper by Lerer and Hansson, in which the perspective forwarded in Hansson (1990) was honed. In essence, the authors suggested that guns, as a social problem, be addressed more as a matter of public health and less as a criminal justice issue. After all, the primary social problem associated with firearms is death and injury, and:

"[legal] reforms have failed to limit either the illegal possession of guns, or the abuse of firearms by licensed and unlicensed users. Despite relatively strict laws, people use guns with little restraint" (Lerer & Hansson, 1993:639).

Therefore firearm-related interventions should be focused on changing people's attitudes to guns and violence in general, e.g. by educating the public on the dangers of keeping guns in the home and non-violent means of resolving interpersonal conflict (Lerer & Hansson, 1993). Interestingly, this work echoes two of the key points Zazeraj (1973) made some twenty years before, namely, the relative inefficacy of traditional gun control legislation, and the importance of considering the meaning that people attribute to situations when seeking to modify gun-related behaviour. The main objective of this approach was to reduce death and injury by developing a *culture* of disarmament and non-violence (Lerer & Hansson, 1993). The public health approach has recently benefited from epidemiological studies that have identified groups most at risk of gun-related violence (e.g. The MRC, 1995).

## A QUANTITATIVE PICTURE

### Firearm Fatalities Nationally

National mortality figures published annually by the CSS have been the best available source of quantitative data on firearm fatalities in South Africa for some forty years.<sup>9</sup> Because the statistics have been classified according to the causes of death prescribed in the International Classification of Diseases (ICD), statistics for the main types of firearm fatalities have been included consistently, that is, accidents, suicides and homicides.<sup>10</sup> Breakdowns by sex, race and age-group were also routinely provided.<sup>11</sup> It is thus disturbing to find that in 1993 the CSS stopped furnishing figures for each cause of death and has since provided only composite totals for so-called natural and non-natural deaths (Van Niekerk, 23 January 1997). This is a serious loss of one of the few sources of longitudinal data on firearms in this country.<sup>12</sup>

9 But no equivalent source of information on firearm injuries.

10 Including legal intervention.

11 Racial breakdowns were terminated from 1991 when Apartheid was removed.

12 Despite a number of written enquiries by the author, the CSS has not provided a rationale for this change in practice.

**Table 3.1:**  
**Firearm Death Rates per 100000 in South Africa, 1983-1992.**

Years	Accidents	Suicides	Homicides	Overall
1983	0.4	2	2	4
1984	0.2	2	3	5
1985	0.4	1	2	3
1986	0.5	2	3	5
1987	1	NA	4	NA
Averages	0.5	2	3	4
1988	1	2	4	6
1989	0.2	2	4	6
1990	0.1	1	NA	NA
1991	0.1	2	10	12
1992	0.1	1	7	8
Averages	0.2	2	6	8

*Sources:* calculated from population data in The CSS (1994[i]) and mortality data in The CSS (1992[i] to 1983[i]).

As the research for this thesis pertains to the period 1984 to 1991, figures on firearm fatalities for the slightly longer period from 1983 to 1992, have been included. The data have been converted into various averages and rates in order to increase reliability and enhance the validity of comparisons.<sup>13</sup>

According to the five-year averages in Table 3.1 the rate of gun death doubled over the ten-year period from 1983 to 1992 due to an increase in homicide. By contrast, the five-year average mortality rate for firearm accidents decreased by more than half and the suicide rate remained constant. Table 3.2 shows that guns accounted for a relatively high proportion of suicidal deaths and according to the five-year averages there was little change in the proportion of suicides perpetrated with firearms between 1983 and 1992. Comparatively, guns accounted for a lower average proportion of homicides and the five-year average percentage of gun homicides more than doubled over the period. The vast majority (68%) of the gun deaths that occurred between 1983 and 1992 were homicidal; only 26% were suicidal and six per cent were accidental (See Table 3.3).

<sup>13</sup> Figures have been rounded to the nearest whole number and when appropriate to the first decimal place. NA indicates figures that were not available at the time of writing.

Table 3.2:

Firearm Suicides and Homicides as Percentages of All Suicides and Homicides, South Africa, 1983-1992.

Years	Firearm Suicides/ All Suicides (%)	Firearm Homicides/ All Homicides (%)
1983	29	6
1984	NA	8
1985	28	8
1986	33	10
1987	NA	11
Averages	30	9
1988	30	10
1989	26	8
1990	41	NA
1991	37	26
1992	29	35
Averages	33	20

Sources: calculated from mortality data in The CSS (1992[i] to 1983[i]).

Homicides and suicides were clearly the major causes of firearm fatalities and accidents accounted for a relatively low proportion of firearm deaths. Table 3.3 also shows that the average proportions of firearm fatalities resulting from suicides and accidents decreased substantially from the first to the second five-year period, but the proportion due to homicides increased markedly. Together these mortality data suggest that homicide was the key public health problem in South Africa between the early eighties and the early nineties: there is consistent evidence of a real increase in homicidal deaths caused by firearms.

According to Table 3.4 males were over-represented as victims of every type of gun death in South Africa between 1983 and 1992. Notably, it was firearm suicides that claimed the highest proportion of *female* victims. Furthermore, Africans were over-represented as victims of gun homicides, whereas whites were over-represented as victims of firearm suicides and accidents. Coloured people were over-represented as victims of gun accidents, but Asians were under-represented in every category of gun death.

**Table 3.3:**  
**Firearm Accidents, Suicides and Homicides as Percentages of Gun Deaths in South Africa, 1983-1992.**

Years	Accidents (%)	Suicides (%)	Homicides (%)
1983	10	38	52
1984	5	41	54
1985	11	37	52
1986	11	37	52
1987	NA	NA	NA
Averages	9	38	53
1988	9	29	61
1989	3	32	65
1990	NA	NA	NA
1991	1	17	82
1992	1	12	87
Averages	3	23	74

*Sources:* Calculated from mortality data in The CSS (1992[i] to 1983[i]).

Like race, age affects the risk of firearm death. According to the CSS mortality statistics for the 1983 to 1992 period, people aged between 15 and 29 were at greatest risk of fatal gun accidents, those between 20 and 39 were at highest risk of committing suicide with a firearm, and those aged between 20 and 34 were most prone to gun homicide. But it was young adults in the 20 to 29 year age-group who were most vulnerable to all types of firearm death.

**Table 3.4:**  
**Average Percentages of Firearm Deaths by Victims' Sex and Race-Groups, South Africa, 1983-1990.<sup>14</sup>**

Causes	African %	White %	Col. %	Asian %	Male %	Female %
Accidents	60	22	17	1	94	6
Suicides	8	87	4	1	80	20
Homicides	85	7	7	2	91	9
Averages	51	39	9	1	88	12
Pop.	69	17	11	3	50	50

*Sources:* calculated from mortality data in The CSS (1992[i] to 1983[i]) and population data in The CSS (1994[i]).

<sup>14</sup> Note, racial breakdowns were not published after 1990.

### **Guns and Political Conflict**

There is little doubt that contemporary South African society is highly violent: the homicide rate is said to be six-times higher than the notoriously violent USA (The Argus, 7 August 1993). Certainly political conflict over Apartheid raised the incidence of non-natural death and injury, especially during the eighties (e.g. The South African Institute of Race Relations (SAIRR), 1995 to 1985; Howe, 1989; Knobel, 1986). In 1984 about one person in every 100000 died due to political conflict, but by 1990 this death rate had risen to 12 per 100000, and as recently as 1994 it was still six-times higher than the 1984 rate (The SAIRR, 1995 to 1985). But even before the civil war took its toll, violence and injury were already major causes of death for people under 44 in South Africa (Bradshaw *et al*, 1984:11-18). In other words, violence has been a longstanding social problem which has been exacerbated by protracted political conflict over the last 10 to 15 years. Hence, the substantial body of accumulated literature and statistics on the topic of violence in this country is not surprising.

It has generally been *assumed* that guns played a key role in the civil war. However, official statistics showing the actual proportion of politically-related deaths and injuries attributable to firearms are only available for the first two years of the conflict. The Nationalist government explicitly refused to release this information from 1986 onwards (The SAIRR, 1986). According to government figures for 1984 and 1985 shooting was the leading cause of death and injury, accounting for approximately two-thirds of all politically-related deaths and 74% of injuries (The SAIRR, 1986:485). Notably, the majority of the fatal shootings that took place during the first two years of the conflict were perpetrated by police and members of the defence forces (The SAIRR, 1986).

### **Research on Metropolitan Cape Town**

The sample of shootings used for this dissertation was drawn from metropolitan Cape Town. Hence, work pertaining to civilians and guns in this particular geographic area have been selected for review. One such study examined injuries and deaths in the region between May and July of 1986 when approximately 60000 African people were dislocated (Hoffman *et al*, 1986). The investigation showed that rates of *gunshot* injuries and deaths rose significantly in the flashpoint areas over this period. It also revealed that the gunshot fatality rate was unnecessarily high because many of the injured were not medically treated. In 1994 MacDonald and Lerer examined the question of whether there had been a proportional increase in firearm homicides in Cape Town over the period 1986 to 1991. Their analysis revealed a statistically significant increase in the proportion of gun homicides after June 1991 which was attributed to factional fighting over lucrative routes for mini-

bus taxi's (MacDonald & Lerer, 1994).

The most informative of the city-based studies relating to firearms have been those of Knobel (1986) and the Medical Research Council (1995). The combined data from these two studies facilitates a view of firearm-related mortality over two decades and enables firearm death to be viewed in relation to non-natural mortality. Because Knobel (1986) analysed mortuary data for the period 1976 to 1985 and the MRC appraised this information for 1994, it is possible to compare gun mortality at the approximate mid-points of three successive decades, namely, 1976, 1985 and 1994. To enhance comparability the figures from these two investigations have been converted into percentages and presented in Table 3.5.

**Table 3.5:**  
**Relative Percentages of Main Causes of Non-Natural Deaths in Cape Town.**

Causes	1976 %	1984 %	1994 %
Transport Accidents	51	44	39
Sharp Injuries	22	35	33
Blunt Injuries	14	14	8
Firearm Injuries	13	7	20

*Sources:* Knobel (1986) and the MRC (1995).

According to Table 3.5 transport accidents were the major cause of non-natural death in the mid-seventies, with sharp injuries second, blunt injuries third and firearm injuries fourth. Indeed transport accidents accounted for about half of the deaths in these four categories. Over the next twenty odd years, however, the proportions of deaths resulting from sharp and firearm injuries rose considerably, whilst those caused by transport accidents and blunt injuries dropped. Although transport accidents remained the major cause of non-natural death, sharp injuries became a closer second cause and firearm injuries surpassed blunt injuries. By 1994 stabbings and shootings accounted for a higher proportion of non-natural deaths and firearms were responsible for a greater percentage of suicides and homicides than 20 years before (The MRC, 1995). The temporal pattern is also interesting: firearm deaths dropped suddenly after 1976 and remained consistently low over the next eight years until 1985, when there was a sharp increase and subsequent peak in 1994. In recent years a number of authors have attributed such marked upsurges in firearm fatalities to heightened political conflict (MacDonald & Lerer, 1994; Knobel, 1986).



**Table 3.6:**  
**Percentages of Firearm Homicides and Suicides, Cape Town.**

Causes	1983	1984	1985	1994
Homicides	50	56	78	80
Suicides	50	44	22	20
Ratios	1:1	1:1	1:4	1:4

*Sources:* Knobel (1986) and the MRC (1995).

According to Table 3.6 the ratio of firearm homicides to suicides was symmetrical before the onset of the civil war in 1983. In 1985, as the conflict escalated, there was a substantial increase in gun homicides in relation to suicides, and this pattern persisted into the mid-nineties. In 1983 there was approximately one gun suicide to every gun homicide, but from 1985 onwards there were four gun homicides to every gun suicide.

**Table 3.7:**  
**Homicide and Suicide Rates per 100000 in Cape Town, 1994.**

	African	Col.	White	Cape Town
Homicide	93	80	10	68
Suicide	5	10	20	11

*Source:* calculated from The MRC (1995).

Cape Town is a particularly violent city. In 1994 almost a third of the deaths in this area were due to violence and injury, and the homicide rate was more than seven-times higher than the average US rate. Furthermore, a substantial 46% of non-natural deaths were homicides, with stabbings (52%) and shootings (26%) being the two most common homicidal means. Males, Africans and those aged between 15 and 34 were over-represented as homicide victims in Cape Town in 1994.<sup>15</sup> This same group was over-represented as victims of *gun* homicide (The MRC, 1995:14-15). Males, whites and those aged between 15 and 34 were over-represented as *suicide* victims in Cape Town (The MRC, 1995:17 & 19; The CSS, 1994[i]: 7 & 9).

<sup>15</sup> But firearms were the leading cause of homicidal death for whites.

Shooting was the most common means of suicide, accounting for 39% of suicidal deaths in 1994 (The MRC, 1995:17).<sup>16</sup> These figures include fatalities perpetrated by both civilians and police. With the exception of Knobel (1986) and Hansson (1990), few studies have reported the relative proportion of civilian to police fatal shootings in South Africa.<sup>17</sup>

Hansson's (1990) study is worthy of further note here for it was the first relatively large empirical investigation of firearm fatalities in South Africa that was not limited to mortality data.<sup>18</sup> For the purposes of this investigation fatal shootings were traced from the mortuary through the legal process to culmination either at inquest or criminal trial. This method yielded a wider range of information than previous studies because it enabled the reconstruction, at least partial, of the circumstances surrounding each gun-related death, as well as the Court's finding regarding lawfulness. The approach also facilitated investigation of the hitherto neglected question of restraint, that is, the extent to which shooters employed less-than-lethal means before killing their victims. Although this pioneering study constituted a significant advance in the field, unfortunately the research sample was skewed in favour of more serious criminal cases. Nevertheless, the work revealed the following important, albeit preliminary, findings: the vast majority of the fatal shootings in Cape Town between 1984 and 1986 were homicides rather than suicides, and firearm accidents were extremely uncommon. Despite the widespread political conflict which characterised this period, the bulk of the gun deaths took place in everyday circumstances rather than in situations that were overtly political. The vast majority of the shooters and the victims in this sample were males, Africans were over-represented as victims, and whites were over-represented as victims and shooters. Interestingly, handguns were the most common type of firearm and licensed outnumbered unlicensed guns. In general, civilians and police were found to have used firearms with alarmingly little restraint, and to have violated the basic legal principles of minimum force and proportionality. However, few of these shooters were held criminally liable for killing in spite of the lack of restraint with which they had employed guns.

### **Gun-Related Crime**

General speaking, estimates of crime prevalence derived from surveys of crime victims are arguably more accurate than figures based on reported offences, prosecutions or convictions as the former reflect some unreported crime (e.g. Glanz *et al*, 1992). Because such survey data are not yet available with respect to South Africa, those working in the field of crime have tended to rely on the range of official statistics published in the annual reports of the Police, the Departments of

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16 The second being hanging (21%).

17 That is, 72% and 34% of gun homicides resp.

18 Until 1996 this was still the only study of its kind in South Africa.

Justice and Correctional Services and the CSS. Together these government publications have generally provided the annual frequencies of reported cases, prosecutions and convictions with respect to a wide range of crimes including the following firearm-related offences: illegal possession of guns and/or ammunition, illegal supplying of guns and/or ammunition, theft of guns, pointing a gun, and robbery, attempted murder and murder with firearms.

Of the three basic variables; convictions, prosecutions and cases reported to the police, the latter has generally been accepted as the most reliable indicator of crime prevalence. For, "... the further the statistic is 'removed' from the actual crime, the less accurate it becomes since the information becomes 'eroded' along the path of the legal process" (Glanz *et al*, 1992:1). Unfortunately, however, over the past decade figures showing the frequency of reports for each type of firearm offence have *not* been published consistently. By contrast, statistics for prosecutions and convictions with respect to gun-related offences have been published regularly. Whilst it is acknowledged that conviction and prosecution rates are affected by many factors other than changes in rates of offending, conviction rates have been selected as the best available indicator of gun-related crime for the purposes of this discussion.<sup>19</sup> Furthermore, convictions have been chosen over prosecutions because a conviction is arguably a more reliable indicator of whether an offence has taken place. After all, the facts of a case have to be tested in a court of law in order to secure a conviction.

**Table 3.8:**  
**Average Percentages of Convictions for Selected Firearm Offences.<sup>20</sup>**

Offences	1984/89 %	1989/94 %	Averages %
Att. Murder with Guns	60	72	66
Murder with Guns	16	18	17
Robbery with Guns	13	17	15
Theft of Guns	0.4	0.3	0.4

*Sources:* calculated from conviction data in The CSS (1995 to 1986).

Table 3.8 shows convictions for each type of gun-related offence as a proportion of convictions for the relevant background offence, e.g. murder with a firearm in relation to all murder convictions. According to these figures the majority of convictions for attempted murder were for offences involving firearms. By contrast,

<sup>19</sup> Note: when considering temporal trends there is a variable time lapse between offence and conviction.

<sup>20</sup> From July to June.

gun murders constituted a low proportion of murder convictions, and robbery with firearms and gun theft comprised small percentages of robbery and theft convictions. Notably, the proportions of convictions for attempted murder, murder and robbery with guns all increased over this period.

**Table 3.9:**  
**Average Conviction Rates per 100000 for Selected Gun-Related Offences.<sup>21</sup>**

Offences	1984/89	1989/94
Illegal Possession	10	12
Robbery with Guns	5	4
Att.Murder/Murder	4	4
Pointing Guns	2	2
Theft of Guns	1	1
Illegal Supplying	0.4	0.3

*Sources:* calculated from population data in The CSS (1994[i]) and conviction data in The CSS (1995 to 1986).

The figures in Table 3.9 indicate that between 1984 and 1994 illegal possession was the firearm offence of which people were *most* commonly convicted, and illegal supplying was the *least* common. Furthermore, the average rate of conviction for illegal possession increased, but those for robbery with a gun and illegal supplying decreased.

From July 1987 the State began to provide statistics showing the number of convictions for attempted murder and murder for the following three categories of gun type: handguns, long-guns and heavy-calibre guns. Table 3.10 shows that between July 1987 and June 1994, the average conviction rate for murder/attempted murder with handguns was higher than those for long-guns and heavy-calibre firearms. Additionally, the average rate of conviction for murder/attempted murder with handguns rose, whereas those for long-guns and heavy-calibre firearms decreased. According to the percentages presented in the lower part of Table 3.10 the bulk of the convictions for murder/attempted murder with a firearm involved handguns.

<sup>21</sup> From July to June.

**Table 3.10:**  
**Conviction Rates per 100000 and Percentages for Murders/Att.Murders**  
**by Gun Type.<sup>22</sup>**

Murders/Att.Murders	87/8	88/9	89/9	90/1	91/2	92/3	93/4	Averages
<b>Rates -- &gt;</b>								
Handguns	3	2	2	4	3	4	4	3
Long-guns	2	1	1	1	1	1	1	1
Heavy-calibre guns	1	1	0.2	0.2	0.3	0.3	0.3	0.5
<b>Percentages -- &gt;</b>								
Handguns	56	58	75	73	71	79	79	70
Long-guns	33	22	18	19	23	15	15	21
Heavy-calibre guns	11	20	7	8	6	6	6	9

*Sources:* calculated from population data in The CSS (1994[i]) and conviction data in The CSS (1995 to 1989).

Although long-guns played a moderate role, a very low proportion of these offences involved heavy-calibre firearms. The temporal pattern suggests that the percentage of murder/attempted murder convictions for handguns increased and those for long-guns and heavy-calibre firearms decreased markedly during this time.

**Table 3.11:**  
**Reports per 100000, Nationwide and Western Cape.**

Offences	W.Cape Rates	National Rates
Illegal Possession	29	33
Pointing Guns	25	30
Theft of Guns	18	13
Robbery with Guns	75	170
Att.Murder with Guns	67	42
Murder with Guns	18	19

*Sources:* calculated using offence data from The Commanding Officer of the W.Cape (13 April 1995) and The Commissioner of the SAP (1993), and population data in The CSS (1994[i]).

22 From July to June.

The data in Table 3.11 were included to enable comparison, albeit somewhat crude, between provincial and national rates of *reported* firearm offences. Caution is advised because the rates for the Western Cape pertain to 1994 but the national rates are for 1992. According to these figures the rates of gun theft and attempted murder with guns were higher in the Western Cape than nationally, whereas the rates for all other gun-related offences were higher nationally than in this region.

Internationally, research has shown that in most countries it is younger men who perpetrate violence including firearm-related violence. Official crime statistics suggest that this is also the case in contemporary South Africa. Glanz *et al* (1992) analysed figures for the 32 year period from 1956 to 1988 and showed consistently higher conviction rates for males. In terms of race, in 1988 the conviction rate was highest for coloureds and lowest for whites: with the rate for coloureds three times higher than Asians and Africans, and four times higher than whites (Glanz *et al*, 1992:xiii). Although the conviction rates for white males, and Africans and Asians of both sexes decreased, the rate for coloured males remained relatively constant from 1956 to 1988. Also, younger people and those with little formal education have been consistently over-represented in relation to convictions for serious offences (Glanz *et al*, 1992:9 & xiii resp). Overall then, in South Africa as in many other countries, convicts have tended to be young adults, male, black and poorly educated.

**Table 3.12:**  
**National Average Percentages of Males Convicted of Gun-Related Offences.<sup>23</sup>**

Offences	1984/89 (%)	1989/94 (%)
Robbery with Guns	98	99
Att. Murder with Guns	95	97
Pointing Guns	97	97
Illegal Possession	96	97
Illegal Supplying	94	94
Murder with Guns	93	94
Theft of Guns	93	92

*Sources:* calculated using conviction data in The CSS (1995 to 1986).

The figures in Table 3.12 show that from 1984 to 1994 males consistently comprised most of those convicted of seven key firearm offences. The highest proportion of females were convicted of gun theft. Considering that males constituted only half of

<sup>23</sup> From July to June.

the population, they were significantly over-represented as convicts for every one of these gun-related offences, and the ratio of male to female convicts remained relatively constant over time.

**Table 3.13:**  
**National Average Percentages of Juveniles Convicted of Gun-Related Offences.<sup>24</sup>**

Offences	1984/89 (%)	1989/94 (%)
Robbery with Guns	8	12
Theft of Guns	12	9
Illegal Possession	4	7
Att. Murder with Guns	5	7
Murder with Guns	4	7
Pointing Guns	3	4
Illegal Supplying	3	3

*Sources:* calculated using conviction data in The CSS (1995 to 1986).

According to Table 3.13 most of those convicted of gun-related crimes over the period 1984 to 1994 were adults but the average proportion of juvenile (under 18) convicts did increase over this period. Robbery with a firearm and gun theft were the firearm offences for which the highest proportion of juveniles were convicted.

**Table 3.14:**  
**National Conviction Rates per 100000 by Race-Group for Gun-Related Offences, July 1987-June 1988.**

Offences	African	White	Col.	Asian
Theft of Guns	1	2	3	1
Robbery with Guns	5	1	9	1
Murder/Att. Murder with:	5	2	10	3
- Handguns	3	2	6	1
- Long-guns	2	0	3	1
- Heavy-calibre	0	0	1	1

*Source:* Glanz *et al* (1992:75-9).<sup>25</sup>

<sup>24</sup> From July to June.

<sup>25</sup> As in the source zero's indicate figures less than one.

Unfortunately, figures indicating the relative proportions of each race-group convicted of firearm offences have been published too inconsistently to enable reliable temporal analysis. However, according to the available data (see Table 3.14) coloureds had the highest rates of conviction for gun theft, robbery and murder/attempted murder with firearms.

Together the statistics included thus far suggest that adults, males, Africans and coloureds (black people) have been over-represented with respect to convictions for firearm offences in South Africa during the decade 1984 to 1994. Notably, these groups also appear to have been over-represented in terms of convictions in general. Regrettably, however, this profusion of conviction statistics do not support confident conclusions about changes in the prevalence of gun crime in this country. In fact, these figures probably indicate more about the operation of the criminal justice system than about lawbreaking. Nevertheless, it is currently accepted that the crime rate has risen since the early nineties and according to the Minister of Justice "[t]he big issue in our country at the moment is crime, and especially crime involving violence" (Hansard, 10 May 1995:786). A marked increase in violent crime, and particularly offences involving the use of guns, has been reported (The Argus, 7 September 1993; Glanz *et al.*, 1992). For instance, between 1993 and 1994 reports of gun murders increased by seven per cent and robberies with firearms by 21% (Hansard, 10 May 1995:786). Contemporary experts in the field view firearms as a key aggravating factor in relation to violent crime, and particular concern has been expressed over an apparent increase in the use of large calibre assault firearms in violent crime (Cilliers & Van Zyl Smit, 1995). For example, a 61% increase in the use of AK-47 rifles in armed robberies was reported between 1991 and 1992 (The Argus, 7 September 1993). The use of unlicensed firearms in offending also seems to have increased by: 93% in rape, 56% in robbery and 20% in murder cases from 1991 to 1992 (The Argus, 7 October 1993). Importantly, this reputed increase in the use of guns in violent crime has been attributed to a greater availability of illegal firearms mainly on the black market (Cilliers & Van Zyl Smit, 1995).

## **Private Possession**

### ***Introductory Comment***

Although South Africa is said to have a particularly high rate of private gun ownership, recent data suggests that *licensed* possession is somewhat middle-of-the-road, falling between contemporary Australian and Canadian levels (see Table 3.15).<sup>26</sup> Of course, this figure does not include unlawful possession which in 1996 was estimated to be around four million (The Sunday Independent, 6 October, 1996). If illegal possession was even half this level in 1994, the overall rate of

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26 Caution is advised because the Australian figures are for 1992 and the others pertain to 1994.



civilian gun ownership would have been significantly higher at about 9441 per 100000. This would have placed the South African rate above the Canadian, but still far below the US rate of an estimated 83594 per 100000 (Oprah Winfrey, 29 February 1996).

**Table 3.15:**  
**Rates of Licensed Civilian Gun Possession.**

Countries	Rates per 100000
United Kingdom	1546
Canada	4380
South Africa	4495
Australia	4550

*Sources:* calculated from data in Reuters (16 October 1996), The Department of Justice for Canada (1994), The CFR (15 September 1995) and Chappell (1992).

According to key role-players in the National Crime Prevention Strategy (NCPS), there has been a proliferation of firearms in South Africa in recent years (The Inter-Departmental Strategy Team, 1996[b]). The main political factions in the civil war had armed military wings which were generally well equipped with sophisticated weapons of war. Although numerous efforts have been made to disarm private armies, many paramilitary firearms have remained in circulation. Since the mid-eighties both the demand for and the supply of guns has increased significantly and there has been a marked upsurge in private ownership. Most notably, in the post-election period, firearm possession among Africans has risen from two to 60% (The Sunday Independent, 6 October 1996). The endemic political violence and recent increases in crime have bred a widespread fear of violence among people in this country and concerns over safety have fuelled the civilian demand for firearms. Not surprisingly, there has also been a substantial growth in the private security industry. By the close of 1995 there were approximately 300000 private security officers (PSOs) in the country, a high proportion armed with guns (The Inter-Departmental Strategy Team, 1996[b]:31).

There have been ample supplies of legal and illegal firearms to meet the growing civilian demand. A thriving domestic arms industry was developed in response to international sanctions and this source has consistently provided reasonably priced guns for the commercial market. The main source of illegal firearms has been the black market which is run by organised crime syndicates and stocked by gun smuggling from borderline states. Somewhat surprisingly, the State armoury has also been a significant source of illegal firearms, with an estimated five

million security force guns having passed into civilian hands since the onset of the conflict (The Inter-Departmental Strategy Team, 1996[h]:31). Finally, the theft of licensed guns has been noted as a source of illegal firearms, albeit rather insignificant by comparison (The Commissioner of the SAP, 1993).

### ***Legal Possession***

In South Africa information pertaining to private gun ownership has been collected routinely by the Central Firearms Registry (CFR), a division of the police force. In general this data source has been relatively inaccessible to independent researchers although the Commissioner of Police has, on occasion, published selected pieces of information in various annual reports. It was fortunate then that the CFR agreed to make some basic figures available to the author (The CFR, 15 September 1995, 2 September 1992).<sup>27</sup> These data were transformed into more comparable rates and averages and have been included in Tables 3.16 to 3.19.

**Table 3.16:**  
**Selected Statistics on Licensed Guns in South Africa.**

Years	Applications per 100000	Average Guns per person	Licensed per 100000	Declared Unfit per 100000
1986	NA	2	3802	3
1987	518	2	3792	9
1988	447	3	3757	8
1989	437	3	3727	28
1990	741	3	3825	29
1991	632	3	3885	22
1992	710	NA	NA	NA
1993	789	NA	5024	15
1994	765	NA	4495	NA

*Sources:* calculated from The CFR (15 September 1995, 2 September 1992), The Commissioner of the SAP (1987 to 1992), and population data in The CSS (1994[i]).

Table 3.16 shows that from 1987 the rate of applications for firearm licences increased markedly, as did the rate of licensed firearm owners and the average number of guns licensed to each individual.

<sup>27</sup> Despite requests, breakdowns by sex, race-group and age were not provided.

**Table 3.17:**  
**Selected Figures on Gun Licence Applications.**

Years	Applications	Refusals	Granted	% Granted
1984	NA	NA	120558	NA
1985	NA	NA	135382	NA
1986	225386	5165	220221	98
1987	148164	7627	140537	95
1988	130856	7391	123465	94
1989	130655	7240	123415	95
1990	226577	11533	215044	95
1991	197509	18268	179241	91
1992	NA	NA	NA	NA
1993	256989	14009	248976	97
1994	254526	20351	236620	93

*Sources:* The CFR (15 September 1995, 2 September 1992) and The Commissioner of the SAP (1993 to 1988).

According to Table 3.17 the police have consistently granted a high proportion of gun licence applications, at least since 1986. In other words, most of those who have applied for licences to possess firearms have been successful. Interestingly, however, the rate at which people have been declared unfit to possess guns has also increased significantly over this time. Further research is required in order to reliably interpret these apparent trends. In particular the following key issues should be considered: (1) the stringency of the procedure for assessing gun licence applications, and (2) reasons for the increase in declarations of unfitness to possess firearms.

Table 3.18 shows that the number of licensed guns reported missing increased threefold after 1986, but less than one per cent of licensed firearms were reported missing each year and around half of these were usually recovered. According to these figures firearms stolen from licensed owners were not a major source of illegal guns over this period.<sup>28</sup> Nevertheless, it is alarming to note that in 1992 only 20% of the guns that were reported missing were recovered. This prompted the police to focus greater attention on the issue and the figures for recoveries have since improved: 83% of missing guns were subsequently recovered by the police between April 1993 and June 1995 (The Sunday Independent, 6 October 1996).

28 Although not all missing guns are reported.

**Table 3.18:**  
**Licensed Guns Reported Missing and Recovered.**

Years	Reported Missing	Missing <sup>29</sup> %	Recovered	Not Recovered	Not Recovered % <sup>30</sup>
1986	4838	0.2	2526	2312	48
1987	8804	0.3	3703	5101	58
1988	7524	0.3	3434	4090	54
1989	7760	0.3	3678	4082	53
1990	10305	0.3	4303	6002	58
1991	11577	0.4	6715	4862	42
1992	13284	0.3	2718	10566	80
1993	13670	NA	5313	8357	61
1994	16819	NA	8963	7856	47

*Sources:* The CFR (15 September 1995, 2 September 1992) and The Commissioner of the SAP (1993 to 1988).

This is a society in which civilians have increasingly armed themselves with firearms, a trend attributed to a heightened fear of crime and a prevailing culture of violence. The civil war followed by an increased crime rate in the post-election years fanned fear among civilians, many of whom have been prompted to acquire guns for protection. Legal acquisition has been made relatively easy and the police have tended to treat licence applicants somewhat leniently. Furthermore, after almost a decade of violent political conflict, it seems that violence has become the preferred means of dealing with conflict (Hansard, 10 May 1995). In the words of the NCPS Inter-Departmental Strategy Team:

"South Africa's violent history has left us with a 'culture of violence' which contributes to the high levels of violence associated with criminal activity. [Violence] has come to be regarded as an acceptable means of resolving social, political and even domestic conflicts" (1996[b]:4)

In stark contrast to the USA, however, researchers in this country have not yet empirically tested the actual predictive capacity of the two key variables, fear of crime and the culture of violence.

<sup>29</sup> Of all licensed guns.

<sup>30</sup> Of those reported missing.

## OVERVIEW OF KEY FIREARM-RELATED INTERVENTIONS

### Gun Control Legislation <sup>31</sup>

#### *Introduction*

Legislative gun control is something of an established tradition in South Africa. Even before Union in 1910 the territories that were later to comprise the Republic of South Africa (RSA) each had separate legislation governing the possession and sale of firearms and ammunition, including laws requiring civilian gun owners to license their firearms (Zazeraj, 1973).<sup>32</sup> After 1910, however, the laws of the pre-union territories were repealed and replaced with a single new Arms and Ammunition Act 28 of 1937 in terms of which all privately owned guns had to be relicensed.<sup>33</sup> Over the next 32 years this statute was amended seven times before it was finally replaced in 1969 with the Arms and Ammunition Act 75. Despite numerous amendments, the 1969 Act still forms the basis of contemporary firearms legislation in South Africa. Substantial changes have been made to this Act since 1990 when the formal dismantling of Apartheid was initiated, and further amendments are likely over the next few years as part of the process of reconstruction and development which has been undertaken by the new government.

The manufacture, sale, importation, storage, possession and certain aspects of the use of firearms and ammunition are also regulated in part by the Armaments Act 87 of 1964 as amended, the Armaments Development and Production Act 57 of 1968 as amended,<sup>34</sup> and the Simulated Armaments Transactions Prohibition Act 2 of 1976 as amended. In addition, the Tear Gas Act 16 of 1964 pertains to the manufacture, importation and possession of tear gas and weapons designed to propel the substance. In recent years these have included firearms. Finally there is the Dangerous Weapons Act 71 of 1968 as amended, which applies to the manufacture, sale, supply and possession of *any object* that is "... likely to cause serious bodily injury if it were used to commit an assault", including firearms and imitation guns. Since 1992 the State has amended this Act on several occasions, particularly in response to increases in politically motivated shootings on trains and the use of so-called traditional weapons in political conflict between members of the African National Congress (ANC) and the Inkatha Freedom Party (IFP) in KwaZulu-Natal (Sarkin & Varney, 1993). Under the new regulations the carrying of dangerous weapons on trains, railway stations and when attending political gatherings in public places has been generally prohibited (The Minister of Safety and Security, 22 August

31 Shortcomings have been addressed mainly in Chapter Nine.

32 Acts 13 of 1877 and 17 of 1892 in the Cape, Acts 16 of 1862 and 1 of 1906 in Natal, Act 23 of 1908 in the Orange Free State and Act 10 of 1907 in the Transvaal.

33 A local magistrate had to decide whether an applicant was a "fit and proper person".

34 Act 57 established a state owned corporation for the production of armaments, Armscor, the Armaments Development and Production Corporation of South Africa Ltd.

1996).

### ***Main Legislative Changes: 1984 to 1991***

In 1973 the Arms and Ammunition of 1969 was amended for the first time.<sup>35</sup> Two key reforms were introduced: all firearms had to be stamped or engraved with identification numbers,<sup>36</sup> and anyone who wished to deal in ammunition had to have a specific licence. Then in 1978 a wider range of reforms were made to the Act.<sup>37</sup> Firstly, machine guns and rifles were specifically defined as: "any firearm capable of delivering a continuous fire for so long as pressure is applied to the trigger thereof, whether or not that firearm was originally designed to function in that manner". Secondly, a number of controls were introduced that limited the supply of ammunition to those with a dealer's licence or a licensed firearm capable of firing the said ammunition. In addition, in order to acquire ammunition a person was required to sign a request form and an ammunition register. Thirdly, the following two new offences were created: willfully pointing a firearm including an air rifle or revolver at another person, and contravening any provision of the Act.

Five years later in 1983 a particularly notable set of amendments was made to the Act.<sup>38</sup> For the first time a limit was placed on the maximum number of gun licences which could be held by an individual.<sup>39</sup> Furthermore, the definition of an "arm" was expanded to include any firearm with the exception of a cannon, and including gas rifles of 0.177 inch calibre or over, gas pistols, gas revolvers, air rifles of 0.177 inch calibre or over, air pistols, alarm pistols, alarm revolvers and any barrel of a firearm. Significantly, the definition of a "white person" was deleted which brought to an end a long period of legislated racial discrimination under this Act.<sup>40</sup> Since 1937 Ministerial permission had been required for a firearm licence to be granted to a black person, and in the case of R v Mhauli the Court acknowledged explicitly that the law:

"... rendered it more difficult for a non-European to obtain a licence to possess a firearm than in the case of a European, thereby indicating a greater disapproval of the possession of firearms by non-Europeans than Europeans" (1954:87C-D).

A number of the 1983 amendments were aimed at regulating the temporary possession of firearms. After this reform anyone wishing to take temporary possession of a gun without holding a licence was permitted to do so only in order to protect property owned by or in the care of the person to whom the gun was

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35 By Amendment Act 35 of 1973.

36 Plus the manufacturers' serial numbers.

37 Amendment Act 16 of 1978.

38 Amendment Act 19 of 1983.

39 Namely, 12.

40 Although racism probably continued in practice.

licensed. The borrower had to be at least 16, not disqualified from holding a gun licence, have a signed statement from the licensee setting forth the period for which temporary possession had been granted and particulars sufficient to identify the firearm in question, and the gun had to be kept in the immediate vicinity of, or on land occupied or owned by the licensee.<sup>41</sup> However, if a borrower was actually employed to protect the property of a licensee, s/he was required to obtain a special permit from the police for temporary possession without a licence. These amendments also made it permissible for a person under 16 years of age to use a firearm while under the immediate supervision of a licensee.<sup>42</sup>

A group of the 1983 changes were aimed at regulating the carrying of licensed handguns in public places.<sup>43</sup> In terms of these new requirements, pistols and revolvers had to be completely concealed from view when being carried and had to be carried in a manner that enabled effective control to be exercised over weapons at all times. Failing to take reasonable steps to safe-keep a licensed firearm was introduced as an additional ground on which to declare unfitness to possess a gun. The following new offences were introduced: violating the legal requirements for carrying handguns, failing to safe-guard a licensed firearm that was not being carried or under one's direct control, and losing a licensed gun due to negligence.

It was in 1988 that the largest number of reforms were introduced.<sup>44</sup> Applicants for gun licences were obliged to have their fingerprints taken, and a licence was required in order to possess *parts* of firearms such as frames, receivers, magazines and revolver cylinders. Applicants for gun and dealers' licences and those in temporary possession of firearms were obliged to acquire a certificate of competence and have access to apparatus suitable for the safe-keeping of firearms.<sup>45</sup> In addition, anyone in possession of a firearm was required to carry relevant authorisation and to produce it, and the firearm in question, at the request of a police officer. At this time the following grounds for declaring a person unfit to possess firearms were also added: having a mental condition, being inclined to violence, being dependent on alcohol or narcotic drugs, having a conviction for a Schedule Two offence,<sup>46</sup> an offence in which a firearm was used, willfully pointing a firearm at another, failing to safe-guard a firearm while carrying it, negligently losing a firearm, discharging a firearm and negligently killing, injuring or endangering another or their property, and negligently handling a firearm. However, the reforms also empowered the Commissioner of Police to suspend any part of the three year

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41 If borrowed for longer than 14 days police endorsement was required.

42 Of at least 21.

43 Only by civilians.

44 Amendment Act 60 of 1988.

45 But by December 1995 these provisions had *not* been implemented.

46 Including high treason, sedition, terrorism, subversion, sabotage, public violence, intimidation, murder, malicious damage to property with a firearm, rape, assault, robbery, theft of game, house breaking with the intent to commit an offence, kidnapping, childstealing and conspiracy.

period for which a convicted person could be declared unfit to possess a firearm, and enabled any person declared unfit to appeal.

The 1988 amendment Act included a set of provisions pertaining to so-called weapons of war. The basic provision in this group was a prohibition on the private importation, supply or possession of weapons of war including automatic firearms, the ammunition for such weapons and explosives.<sup>47</sup> Furthermore, anyone who suspected illegal possession of these weapons was legally obliged to report this to the police. The maximum sentence for illegally possessing, importing or supplying weapons of war or failing to report, was set as 25 years imprisonment. Licensed firearms lost, destroyed or stolen had to be reported to the police within 24 hours and failure to report constituted a crime. The following new offences were also added: supplying parts of firearms to unlicensed persons, failing to lock a licensed firearm away in the prescribed apparatus, failing to take reasonable steps to prevent the loss or theft of a licensed firearm, endangering property or negligently killing, injuring or endangering another by discharging a firearm, negligently handling a firearm, or handling a gun while under the influence of alcohol or narcotic drugs, and supplying a firearm to someone suspected of being in this state. Lastly, the Minister of Law and Order was empowered to grant temporary periods of indemnity from prosecution to encourage the surrender of unlicensed firearms and ammunition.

The main change wrought by the 1990 amendment Act,<sup>48</sup> was to increase penalties for the following firearm-related offences: the illegal possession, dealing, supplying, importing, exporting, or manufacturing of firearms, parts of firearms or ammunition; forging or altering a firearm licence, permit or authorisation; making a false entry in a firearm register; contravening any condition of a licence, permit or authorisation; making a false statement in an application for a gun licence, permit or authorisation; failing to safe-guard or take reasonable steps to safe-guard a firearm and having a firearm stolen due to negligence. The penalties for these offences were a maximum fine of 12000 rand and/or up to three years imprisonment for a first conviction, and a mandatory penalty of five years imprisonment for subsequent convictions.

Similarly, relatively few reforms were introduced the following year in 1991.<sup>49</sup> The prohibition on the possession, supply, manufacture and importation of weapons of war was expanded to include ammunition and imitation ammunition, parts of such weapons, and explosive devices. The requirements for carrying firearms in public places were extended to apply to all firearms, not only pistols and revolvers: guns, including long-guns, now had to be completely concealed when carried.<sup>50</sup> In

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47 Unless on behalf of the State or with Ministerial permission. Including cannons, recoilless guns, mortars, rocket launchers, machine guns and machine rifles, or any similar armament.

48 Act 30 of 1990.

49 Amendment Act 79 of 1991.

50 By civilians.



addition, the maximum penalty for contravening the requirements for carrying firearms in public places was increased to a fine *and* imprisonment. It is also worth noting that in 1991 the police and others entrusted with firearms in their official capacity were stripped of immunity from prosecution for failing to safe-guard service weapons.

### ***The Current Act*** <sup>51</sup>

#### ***Legal Possession***

Under the current Arms and Ammunition Act 75 of 1969 as amended, civilians are generally prohibited from possessing, supplying or importing weapons of war and specifically fully-automatic firearms such as machine guns and rifles.<sup>52</sup> However, private ownership of other kinds of guns is permitted if a civilian holds the requisite authorisation granted by the Commissioner of Police.<sup>53</sup> This licensing requirement applies to all firearms including gas and air rifles of 0.177 inch calibre or above, gas and alarm handguns, as well as *parts* of firearms.<sup>54</sup> A firearm licence remains valid unless the holder permanently transfers ownership, surrenders or forfeits the gun or is declared unfit to possess a firearm. Furthermore, there is no limit to the number of gun licences that may be held by any individual.<sup>55</sup> The Minister of Safety and Security has the authority to grant immunity from prosecution, for stipulated time periods, to any person who surrenders unlicensed firearms or ammunition to the State.<sup>56</sup>

To obtain a firearm licence a person must be at least 16 and must not have been declared unfit to possess a gun. Licence holders must have their fingerprints recorded and guns must have identificatory marks engraved into the metal. The Minister may request licensees to furnish their addresses and particulars of their firearms. Anyone whose application for a gun licence is refused may appeal to the Minister within 60 days of a refusal.<sup>57</sup> Appeals are considered by a board comprising up to three members who have been practising attorneys, advocates or magistrates for at least five years, and/or persons with a specialised knowledge of firearms. A person who does *not* have a firearm licence may lawfully possess a gun on a temporary basis if s/he has a signed letter of consent from a licensee,<sup>58</sup> is at least 16, has not been declared unfit to possess a firearm and remains in the

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51 As at December 1995 and excluding provisions that had not yet commenced.

52 Unless on behalf of the State or with the Ministerial permission.

53 Hereafter referred to as the Commissioner.

Excluding those who possess arms on behalf of the State like police officers, presidential guards and members of the defence forces.

54 No authorisation is required for gas and air rifles smaller than 0.177 inches and toy weapons.

55 Until 1992 the limit was 12 licences per person.

56 Hereafter referred to as the Minister, and responsible for the police since 1994.

57 And anyone declared unfit.

58 For up to two weeks.

immediate vicinity of, or on premises owned or occupied by the licensee. Also, the purpose of temporary possession must be personal protection or the safe-keeping of a weapon. Persons younger than 16 may temporarily possess a firearm when under the immediate supervision of a licensee over 21.

Like firearms, the supply and possession of ammunition is strictly regulated by this statute. No person is permitted to possess ammunition unless s/he is also in legal possession of a firearm capable of firing it. Furthermore, ammunition may not legally be supplied unless the recipient is authorised to possess a gun capable of firing it and has signed the supplier's register.

### ***Unfitness to Possess Firearms***

A person may be declared unfit to possess a firearm for up to two years.<sup>59</sup> The Commissioner may declare the following persons unfit to possess firearms: (1) anyone who has threatened or expressed the intention to kill or injure him/herself, (2) anyone who has threatened or expressed the intention to kill or injure another person, (3) anyone with a mental condition that makes the possession of a firearm contrary to his/her own interests or those of another, (4) anyone who is inclined to violence, (5) anyone who is dependent on alcohol or narcotic drugs, and (6) anyone who has failed to take reasonable steps to safe-keep a licensed firearm. Before declaring anyone unfit the Commissioner may ask the person in question to attend a hearing and give reasons why s/he should not be declared unfit to possess a firearm. The person is entitled to be represented by legal counsel and to request that the Commissioner call anyone who has made a statement about the person concerned to be cross-examined. If a person is declared unfit, the Commissioner must notify him/her in writing and provide reasons for this decision.

Unless a Court expressly determines otherwise, anyone who has been convicted of any of the following offences is deemed *automatically* to be unfit to possess firearms: the illegal possession of a firearm, willfully pointing a firearm at someone, failing to lock away a licensed firearm, losing or having a licensed firearm stolen because of a failure to lock it away as prescribed, failing to take reasonable steps to prevent the loss or theft of a licensed firearm, negligently injuring or endangering another or property by discharging a firearm, handling a firearm negligently or while under the influence of alcohol or narcotic drugs, supplying a firearm to a person who is under the influence of alcohol or narcotic drugs, and any other offence involving a firearm.<sup>60</sup> Courts also have the *discretion* to declare anyone convicted of any of the following offences to be unfit to possess firearms: high treason, sedition, terrorism, subversion, public violence, intimidation, murder, culpable homicide, malicious injury to property, rape, assault, robbery, theft of game, kidnapping, childstealing,

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<sup>59</sup> But any part of this period may be suspended

<sup>60</sup> Except where an admission of guilt fine was paid.

and breaking/entering with the intent to commit an offence.<sup>61</sup> Before declaring anyone unfit to possess a firearm on the grounds of a conviction, a Court is required to inform the person, to allow her/him to advance reasons and to present evidence in his/her defence.

### ***Carrying Firearms***

A civilian may carry a licensed firearm in a public place if it is completely covered and s/he is able to exercise effective control over the weapon at all times. It is unlawful to carry a firearm or other dangerous weapon on a train, in a railway station or while attending a public gathering (The Dangerous Weapons Act 71 of 1968 as amended). Anyone who carries a firearm in a public place or has a gun in his/her immediate custody must identify him/herself if so requested by a police officer, and may also be required to produce the weapon concerned and the requisite authorisation.

### ***Dealing, Importing, Exporting and Manufacturing***

Firearms and gun parts may not be legally supplied unless a recipient has the requisite authorisation. A dealer's licence is required in order to deal in firearms or ammunition. These licences are issued on an annual basis and limit dealing to specific premises and conditions. Every firearm dealer must keep a register which the police may inspect at any time, containing details of all firearms and ammunition received and supplied, and the relevant authorisations. Ministerial authorisation is required to import or export firearms and ammunition.<sup>62</sup> Any firearm imported must have a manufacturer's serial number or other identificatory number engraved thereon. Ministerial permits are also required to manufacture firearms, ammunition and explosive components. A person may, however, load or reload cartridges for a licensed gun without specific authorisation.

### ***Offences and Penalties***

The large number of offences that have been created under the Arms and Ammunition Act have been summarised in Table 3.19. If a person is convicted of any of these offences, a Court may cause any firearms and ammunition relating to the offences to be forfeited to the State and may cancel authorisations held by the person concerned.

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61 Even if a firearm was not used in the offence.

62 Excluding transactions on behalf of the State.

**Table 3.19:****Summary of Offences and Penalties under the Arms and Ammunition Act.****Illegal Possession:**

- Possessing a firearm without the requisite authorisation -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for any subsequent conviction.<sup>63</sup>
- Possessing more than one firearm without the requisite authorisation -- imprisonment up to 10 years.<sup>64</sup>
- Possessing ammunition without also being in lawful possession of a gun designed to fire it -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
- Possessing more than one hundred rounds of ammunition for an unlicensed firearm -- imprisonment up to 10 years.<sup>65</sup>
- Possessing any weapon of war without the requisite authorisation -- imprisonment for a minimum of five years and a maximum of 25 years.<sup>66</sup>
- Contravening the terms of a licence -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.<sup>67</sup>
- Forging or altering any authorisation -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.<sup>68</sup>
- Making a false entry in a dealer's register or providing false information -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
- Making a false statement in order to obtain a licence or permit under this Act - a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.

**Failure to Report Illegal Possession of Weapons of War:<sup>69</sup>**

- Failing to report illegal weapons of war to the police after being in contact with a person in possession of these weapons -- imprisonment up to 25 years.
- Failing to report illegal weapons of war to the police after being on premises where such weapons were being kept illegally -- imprisonment up to 25 years.

**Illegal Supplying, Dealing, Importing/Exporting and Manufacturing:**

- Permitting or enabling someone under 16 to be in possession of firearms or ammunition -- a fine up to 4000 rand and/or imprisonment up to one year.<sup>70</sup>

<sup>63</sup> Any firearm, including gas and air rifles up to 0.177 inch calibre, gas, alarm and air handguns, and firearm barrels.

<sup>64</sup> Excluding firearms smaller than 0.2 inch calibre, gas and air rifles, air, gas and alarm handguns, firearm barrels, and shotguns up to 0.410 inch calibre.

<sup>65</sup> Excluding firearms smaller than 0.2 inch calibre, gas and air rifles, air, gas and alarm handguns, firearm barrels, and shotguns up to 0.410 inch calibre.

<sup>66</sup> Including imitations and ammunition.

<sup>67</sup> Including gun and dealers' licences.

<sup>68</sup> To import or export, possess or deal in firearms and/or ammunition.

<sup>69</sup> Some of these offences have since been ruled unconstitutional.

<sup>70</sup> With the onus on the accused to prove otherwise.

- Supplying firearms or ammunition to someone who does not have the requisite authorisation -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
  - Supplying a firearm to someone who is under the influence of alcohol or narcotic drugs -- a fine up to 4000 rand and/or imprisonment up to one year.
  - Dealing in arms or ammunition without the requisite authorisation -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
  - Importing or exporting firearms or ammunition without the requisite authorisation -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
  - Manufacturing firearms or ammunition without the requisite authorisation -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
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#### **Failure to Safe-Keep Firearms:**

- Failing to lock away a licensed firearm as prescribed -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
  - Losing or having a licensed firearm stolen because of a failure to lock away the gun as prescribed -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
  - Losing or having a licensed firearm stolen because of a failure to take reasonable steps to prevent the loss or theft -- a fine up to 12000 rand and/or imprisonment up to three years for a first conviction, and up to five years for subsequent convictions.
  - Failing to report the loss, theft or destruction of a licensed firearm to the police within 24 hours -- a fine up to 4000 rand and/or imprisonment up to one year.
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#### **Violations of Carrying Provisions:**

- Failing to completely conceal and/or exercise effective control over a licensed firearm while carrying the weapon in a public place -- a fine up to 2000 rand and/or imprisonment up to six months.
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#### **Miscellaneous Violations:**

- Failing to identify oneself to the police at their request -- a fine up to 4000 rand and/or imprisonment up to one year.
  - Failing to produce a firearm and/or the requisite authorisation when requested by the police -- a fine up to 4000 rand and/or imprisonment up to one year.
  - Failing to produce a dealer's register and/or stock when requested by the police -- a fine up to 4000 rand and/or imprisonment up to one year.
  - Obstructing or hindering any person performing a duty under the Act -- a fine up to 4000 rand and/or imprisonment up to one year.
  - Contravening or failing to comply with any notice issued under this Act -- a fine up to 4000 rand and/or imprisonment up to one year.
  - Contravening or failing to comply with any provision of the Act not otherwise stipulated -- a fine up to 4000 rand and/or imprisonment up to one year.
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#### **Specific Criminal Acts with a Firearm:**

- Willfully pointing a firearm at someone -- a fine up to 4000 rand and/or imprisonment up to one year.

- Negligently injuring or endangering a person or property by discharging a firearm -- a fine up to 4000 rand and/or imprisonment up to one year.
- Negligently handling a firearm -- a fine up to 4000 rand and/or imprisonment up to one year.
- Handling a firearm while under the influence of alcohol or narcotic drugs -- a fine up to 4000 rand and/or imprisonment up to one year.
- Discharging a firearm in a public place when this is not legally justified -- a fine up to 4000 rand and/or imprisonment up to one year.

### ***Interim Concluding Comment***

In South Africa the possession of firearms by civilians has been, and remains, a carefully circumscribed privilege and not a right. From pre-union times the aim of firearm legislation appears to have been the regulation rather than the prohibition of private gun ownership.<sup>71</sup> In general, it has only been those prone to crime and/or violence who have been excluded from possession. More recently, however, licensed gun owners who fail to take adequate care of their guns and those who fail to keep their firearms safely have been barred from subsequent legal possession. While the current legislation clearly outlaws private gun ownership by certain civilians, it also enables many people to possess a wide variety of guns. In fact, weapons of war like fully-automatics and assault firearms are the only guns that have been effectively banned from private possession.

Considering the former system of Apartheid it should not be surprising to find that, for many years black people's access to licensed guns was purposely restricted. Until the demise of the Apartheid State in the nineties, it was difficult for black civilians to acquire guns lawfully and whites owned the vast majority of licensed firearms (e.g. The Sunday Independent, 6 October 1996; Zazeraj, 1973). Notably, this form of racial discrimination has a lengthy history: in the late 1880s it was unlawful to supply black people with firearms or ammunition in the former territories of Natal and the Orange Free State. During the same era in the former Transvaal and Cape Colony, black people had to obtain special authorisation to possess guns (Zazeraj, 1973). In 1937 when these laws were consolidated into the first Arms and Ammunition Act, the lattermentioned provision was included and retained over the next 46 years, and until 1983 black civilians had to acquire Ministerial permission to possess licensed firearms. Some authors have maintained that this legislated difference in the applications procedure for gun licences was not designed to limit black civilians' access to licensed firearms (e.g. Zazeraj, 1973). This seems highly unlikely, however, considering the extent of the legislated racism that was implemented by the Apartheid State. Furthermore, whether it was the intention of this provision to limit black people's lawful access to guns or not, this

71 At times the State has actively encouraged certain groups to acquire firearms, e.g. in the Transvaal at the turn of the century free guns were issued to whites who were unable to afford their own firearms. See Zazeraj (1973).

aspect of the law was undeniably racially discriminatory as it stipulated differential extra-legal requirements solely and unjustifiably on the grounds of race.

Numerous amendments have been made to the Arms and Ammunition Act since it was introduced some 25 years ago. Considering the key reforms it is evident that legislators have tended to pursue two main objectives. The first appears to have been the introduction of increasingly harsh criminal sanctions intended to deter undesirable conduct in relation to guns. Over time, more and more behaviours have been criminalised under the Act and the penalties for firearm-related offences have been bolstered. Minimum and maximum sentences have been increased, maximum sentences have been enhanced for repeated offending, and mandatory minimum sentences have been introduced.<sup>72</sup> The second legislative aim seems to have been the improvement of criteria used to identify those prone to violence and thus considered unfit to possess firearms. To this end the number of legal indicators of unfitness has been increased significantly.<sup>73</sup>

On the whole, the changes indicate a gradual extension of the State's control over the private ownership of guns, along with efforts to improve the monitoring of licensed owners and their firearms. For instance, it became law in 1973 for all firearms to be engraved with an identificatory number, and from 1988 onwards for gun licence applicants to be fingerprinted. Furthermore, the range of weapons regulated by law has been increased to include gas, alarm and air guns, imitation firearms and even parts of guns. Notably during the seventies, administrative control was extended to ammunition. In 1973 licences for dealing in ammunition were introduced and in 1978 it was made unlawful to possess ammunition without also having a licensed gun capable of firing it.

Of course, it is not only the written law that is relevant but the way in which it is enforced in practice. In North America poor enforcement by police and the Courts has been identified as a key impediment to the efficacy of legislated gun controls.<sup>74</sup> Judges have often been reticent to punish civilians merely for failing to license their firearms, particularly when rates of crime and violence have been high. This judicial attitude rests on a belief, which is widespread in the USA today, that civilians have a right to use firearms to protect themselves. Notably there is some indication in South African case-law of a similar judicial tendency. As far back as 1981 in the case of *S v Ntanzu*, the Court stated rather explicitly that the mere possession of an unlicensed firearm was not a serious offence in itself. This opinion has endured, for in 1992 in the case of *S v Siphethu* the Court recognised that the motive of self protection must be considered as a *mitigating* factor in cases of unlicensed gun possession, considering the threat posed by crime and violence in this country. Accordingly, in *S v Meyer* (1992), the Court reduced the sentence of an

72 The first was established under the 1968 Dangerous Weapons Act.

73 Especially since 1988.

74 See Chapter Two.

accused who had been convicted of illegally possessing a firearm, because the said weapon had been owned for the purposes of self defence.<sup>75</sup> These cases reflect the opinion that, in a violent society, law abiding civilians ought not to be punished unduly merely for trying to protect themselves and their loved ones. This attitude is similar indeed to that which has characterised the North American judiciary and it may well be undermining the efficacy of legislated gun controls in this country as has been the case in the USA. Unfortunately, research on this matter has yet to be conducted in the South African context.

## **Law Governing the Use of Deadly Force**

### ***Introducing Grounds of Justification***

The main statute governing the private ownership and use of guns in the RSA has just been examined. In this section, *grounds of justification*, another more specific aspect of the law pertaining to the use of guns by civilians has been addressed (Burchill & Milton, 1994).<sup>76</sup> In most Western countries including South Africa, these grounds permit acts under certain circumstances that would otherwise be unlawful. This legal construct gives meaning to the term *justifiable homicide*, for unless there are grounds of justification, killing is unlawful (Snyman, 1993). Hence, if a person fatally shoots someone and the grounds of justification do not apply, his/her conduct is likely to be deemed unlawful and s/he may be tried on a charge of murder or, alternatively, culpable homicide. If a Court proves that such an accused foresaw that her/his act could have been unlawful, s/he may be convicted of murder. However, if it is proven that the accused did *not* foresee this possibility it is negligence and s/he may be found guilty of culpable homicide (Snyman, 1993). In effect, grounds of justification stipulate the conditions under which it is legally acceptable to kill someone by any means including shooting. In South African law private defence is the most common ground on which killing by civilians has been justified (e.g. Burchill & Milton, 1994; Snyman, 1993).<sup>77</sup> It should also be noted that this is one of relatively few countries in which civilians are permitted to kill in order to effect an arrest.<sup>78</sup> Because arrest is more commonly associated with law enforcement, it has been discussed in relation to the police in Chapter Five.

### ***Underlying Principles***

The South African legal controls on the use of deadly force, like those in most nations, have been based on the internationally accepted legal principles of minimum force and proportionality. The third principle, of the incremental use of force, has been less consistently applied. Minimum force is the notion that the least possible

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75 By suspending six months of an 18 month prison sentence.

76 Alternatively termed defences that exclude unlawfulness.

77 Also available to police.

78 Or prevent an escape



force should always be used, and the English Court of Appeal has explained the principle thus:

"... our courts will never regard the use of force as necessary to achieve a particular objective if that objective can reasonably be achieved by employing a lesser degree of force or a less harmful course of action" (R v Mahomed, 1938:34).

Hence, firearms should only be used when shooting constitutes the least possible force necessary to achieve a lawful goal in a given situation.

There is a great deal of contention with regard to the second principle of proportionality. The controversial issue here is what factors should be considered in assessing whether force has been proportional. For instance, ought there to be a balance between the weapons employed, between the interest being defended and the harm done in order to protect this interest, between the harm threatened and that used in defence, or among some combination of these elements? (Snyman, 1993). The definition that has been most widely accepted in this country is that force is proportional when it is commensurate with the danger or social harm that is to be prevented (Haysom, 1987[a]).

The incremental use of force incorporates the principle of minimum force. According to this notion, whenever feasible, non-violent means must be employed before violent means, and less-than-lethal means before lethal means. Ideally then, the starting point ought to be no force at all and forceful means ought to be introduced only if unavoidable, and then gradually, beginning with the least possible force (e.g. The United Nations, 1990).

### ***Private Defence***

Renowned legal scholars Burchill and Milton have explained private defence thus: "[a] person who is the victim of an unlawful attack upon person, property or other recognised legal interest may resort to force to repel such an attack. Any harm or damage inflicted upon an aggressor in the course of such private defence is not unlawful" (1994:109). Throughout the world private defence or protective force is the oldest and best established defence against unlawfulness (Snyman, 1993). Under contemporary South African common law it is lawful to kill in private defence and the rationale is as follows:

"[i]t stands to reason that it is impossible for the state authorities to protect the individual at all times against unlawful attack, and for that reason every individual today still has the right to 'take the law into his [her] own hands', so to speak, in private defence, and temporarily to act on behalf of the state authority in order to uphold the law. The basis for the recognition of private defence as a ground of justification still is the concept that justice should not yield to injustice" (Snyman, 1993:98).

More specifically, private defence is a tripartite justification comprising self defence, the defence of another, and the defence of property (Burchill & Milton, 1994; Snyman, 1993). Private defence may be invoked by civilians and police. When raised in a criminal case as a justification for killing, the onus is on the State to prove beyond a reasonable doubt that the accused did not act in private defence (Burchill & Milton, 1994; Snyman, 1993). The test is the so-called objective test of the reasonable person, explained as follows:

"[t]he Courts sometimes state that, in order to determine whether X acted in private defence, one should ask whether the reasonable man [person] in the circumstances in which X found [her] himself would have acted in the same way. ... Upon closer scrutiny, however, it would appear that the courts apply the reasonable man [person] test here merely in order to determine whether X's conduct was reasonable in the sense that it accorded with what is usually acceptable in society" (Snyman, 1993:106)

Furthermore, what a defender believed at the time of an attack is not relevant. Instead the Court must decide whether a defender's behaviour fulfilled the legal requirements for private defence. So for instance, a person who kills someone whom s/he erroneously believes to be an attacker, cannot rely successfully on private defence (Burchill & Milton, 1994; Snyman, 1993).

In most cases of private defence the threat involves the commission of an act such as an assault by a burglar on a homeowner. However, legally speaking, the *omission* of an act may also constitute a threat (Snyman, 1993). To illustrate: on a train passenger-Y strikes passenger-X when X refuses to leave the sleeping berth that has been booked by Y. In such a case, Y may be found to have acted in private defence because s/he had been threatened by the omission of an act, that is, X's failure to vacate Y's sleeping berth (Snyman, 1984).

For private defence to be lawful the threat or attack must comply with a number of requirements. First, the threat must be unlawful. Hence, a suspect cannot claim private defence if s/he assaults a police officer during an attempted arrest. It is, however, lawful to act in private defence against a person who is not criminally responsible like a young child or someone who is mentally ill. Secondly, the attack must not be completed and it must be an *immediate* threat. But one need not wait to be struck before responding, one may strike someone to avert an attack. Nevertheless, private defence does not justify acts of vengeance, punishment or attacks to prevent future threats. Thirdly, the defensive act must be directed at an attacker and must be *necessary*, that is, the minimum force needed to avert an attack, to prevent damage to or loss of property (Burchill & Milton, 1994; Snyman, 1993). As a corollary, it is usually accepted that if possible and safe, one should flee from an attack. However, there is no legal duty to withdraw and the decisions of the Courts on this matter have been ambiguous (Snyman, 1993). Furthermore, a person must be aware at the time that s/he is acting in private defence. This provision effectively excludes situations in which an assailant is provoked to attack and those in which it is pure coincidence that a defender acts against an unlawful act. An example of the lattermentioned situation is one in which X intentionally kills Y who, unbeknown to X, is planting a bomb at the time s/he is killed (Snyman, 1993).

**Table 3.20:**

**Summary of Restraints for Private Defence, 1991.**

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<i>SELF DEFENCE &amp; DEFENCE OF ANOTHER</i>	
*	The minimum force necessary to avert the threat.
*	Proportionality between the threat to be averted and the force used to defend.
*	Not provoking an attack.
<i>DEFENCE OF PROPERTY</i>	
*	The minimum force necessary to protect the property being threatened and no other means of later regaining stolen property or apprehending the perpetrator.
*	Proportionality between the value of the property threatened and the force used to defend it.
*	Oral warning of the intention to use deadly force.

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In the leading case of Ex Parte the Minister of Justice: In re S v Van Wyk (1967), the Appellate Division (AD) reiterated the minimum force requirement that deadly force may only be used to protect property when less harmful means are not available.<sup>79</sup> The following two criteria for the use of deadly force in the defence of

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79 Including the subsequent recovery of goods or arrest of a suspect.

property were also added in this case: (1) whenever feasible an oral warning of the intention to use deadly force must be issued, and (2) deadly force is not justified in defending property of little value.

### Necessity

"The defence of necessity arises when, confronted with a choice between suffering some evil and breaking the letter of the law in order to avoid it, the accused chooses the latter alternative. The term 'necessity' is used here to cover this dilemma situation whether it is brought about by the force of surrounding circumstances or by human agency" (Burchill & Milton, 1994:129). In 1972 the AD ruled that necessity in the form of compulsion can constitute a complete defence to a charge of murder (S v Goliath). In this case the Court did not decide whether necessity is a defence because it excludes unlawfulness or the fault of an accused; an ambiguity which has resulted in ongoing controversy (Burchill & Milton, 1994). For the purposes of this discussion, however, the prevailing opinion has been adopted; necessity has been treated as a defence that excludes unlawfulness.

Necessity is rooted in South African common law and is closely related to private defence. In both instances a person acts to protect interests of value to him/her against imminent threat (Burchill & Milton, 1994; Snyman, 1993). But the former justification applies to situations in which a person literally breaks the law out of necessity. To illustrate: Z may be compelled to break the law by killing X, if Y holds a gun to Z's head and threatens to shoot her/him if s/he fails to kill X. This is an acknowledgement: "... that it cannot reasonably be expected of someone to sacrifice his own life to save another" (McMare, 1994:165). A person may also break the law out of necessity due to an inevitable evil or an emergency situation which is produced by a non-human intervention like a fire.

There are a number of requirements for a successful defence of necessity: first, there must be an *immediate* threat to some legal interest such as life, bodily integrity or property. Secondly, the threat must have begun or be imminent and may not be already completed or merely expected in the future. Thirdly, the defensive act must be directed at the threat and fourthly, the threat to be averted must not be lawful, e.g. X may not claim necessity if s/he kills a police officer in order to evade lawful arrest. Fifthly, the person claiming this defence must have been aware at the time that s/he was acting out of necessity. And finally, the defensive act must be necessary to avert the threat, and the force used or harm caused by the defensive act must be proportional to the threat to be averted (Burchill & Milton, 1994; Snyman, 1993). This defence may be invoked by civilians and police, but people like law enforcement officers, soldiers and fire fighters, are *not* permitted to avert the dangers inherent in the exercise of their profession by infringing the rights of innocent parties (Snyman, 1993). Therefore, such persons may not claim necessity

as a defence if they foreseeably endanger an innocent third party when using force to carry out their duties. Similarly, no one may claim necessity if s/he foreseeably creates a threat to her/himself. Thus:

"[i]f X foresees that [s]he will find [her] himself in an emergency situation from which [s]he will be able to escape only by infringing the rights of another or by breaking the law, and [s]he nevertheless proceeds with [her] his scheme, it is an entirely different matter. Then [s]he has in a sense invited the trouble [her] himself and cannot raise necessity as a defence" (Snyman, 1993:115).

The test of necessity is the objective test of the reasonable person and not the subjective question of whether the person concerned considered her/himself to be acting out of necessity. And the onus is on the State to prove beyond a reasonable doubt that an accused did not act out of necessity (Snyman, 1993).

**Table 3.21:**  
**Summary of Restraints for Necessity, 1991.**

*	Proportionality between the threat to be averted and the force used in defence.
*	Not foreseeably creating the circumstances in which the use of force is the only option.
*	Not foreseeably endangering an innocent third party in order to avert dangers inherent to the exercise of a profession.

**A Note on Private Security Officers**

In countries with large numbers of armed private law enforcement officers, it is imperative that research on the use of deadly force take into account the role played by this group (Geller & Scott, 1992). Since the mid-eighties, South Africa has experienced major growth in the private security industry and by 1989 there were more private security officers (PSOs) than police in the country, that is, 150000 and 81582 resp. (Hansard, 21 March 1990:614; The Commissioner of the SAP, 1990). Despite the significance of PSOs, systematic research on gun use by this group has not yet been conducted. However, there is specific legislation that regulates the private security industry (The Security Officers Act 92 of 1987 as amended). A governing board has been established which sets and enforces proficiency standards and training requirements, and also deals with allegations of misconduct. Under this law PSOs have been defined as employees who render the service of safe-guarding people or property. Anyone who matches this definition is required to register as a PSO with the governing board, provided they are at least 18, declared "sound of mind", and have no "serious convictions for criminal offences or improper conduct".

## CONCLUDING COMMENT

Private gun possession and use are difficult topics to study empirically. In South Africa accessible sources of reliable data have been scarce and there has been no systematic investigation of civilian gun ownership, either lawful or unlawful. The Central Firearms Register is the best source of information on licensed firearm possession in this country. But the available data have been limited to somewhat general statistics and information on basic factors like sex, race, rural/urban residence and primary motives for gun possession has not been released. There is clearly a need for comprehensive research on contemporary gun ownership. Empirical work on the *use* of guns by civilians in this country has also been scarce. Popular concern has been focused on the use of guns in the perpetration of crime, and academic studies have tended to concentrate on the fatal use of firearms. Consequently, the following key issues have been relatively neglected and now require urgent research attention: lawful firearm use, gun-related conduct among licensed owners, the range of non-fatal outcomes of gun possession, the processes antecedent and consequent to various outcomes such as the non-use of guns, averted use, missed shots and injuries.

On the whole, research on civilians and guns in South Africa has been extremely limited both in quantity and quality, especially when compared to work in this field internationally. In general the academic work on this subject has been reductionist with little evidence of the complex range of salient issues raised in overseas studies. Indeed, researchers in this country have yet to provide basic gun-related data on topics such as: who owns licensed guns and who possesses firearms illegally, for what purposes firearms are acquired and under what circumstances people make use of guns. Fortunately, official statistics on various aspects of gun-related mortality, crime and lawful possession do afford some insight. It seems that since the mid-eighties there have been notable increases in: (1) lawful private gun ownership, (2) illegal firearm possession among civilians, (3) gun deaths, (4) gun homicides, and possibly (6) some gun-related offences, particularly murder, attempted murder and robbery with firearms.

South Africa has taken a rather traditional approach to gun control with a heavy reliance on legislation backed by criminal sanction. Unfortunately this does not appear to have been successful at preventing illegal ownership, gun crime or violence. Inconsistent law enforcement by the police and Courts has been underscored as a key obstacle. Of late a lack of restraint in gun use and resultant death and injury have begun to emerge as important public health issues.

## CHAPTER FOUR

### LITERATURE REVIEW PART III:

#### A Critical Overview of Key Work on the Police and Guns

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#### INTRODUCTION

Internationally, the use of force by public police has drawn fierce debate on both academic and popular fronts. In countries where it has been customary to arm the police with guns, however, it is the use of *deadly force* that has generated the most heated controversy.<sup>1</sup> This term is something of a misnomer as it refers not only to force that actually kills, but to force that is reasonably capable of causing death or serious bodily harm (Geller & Scott, 1992). Because shooting is the most common type of deadly force employed by police forces, deadly force has often been used as a synonym for shooting. This is both erroneous and misleading as shooting is only one of many forms of deadly force. The now infamous beatings of Rodney King by police in the USA in 1991 and Steve Biko in South Africa in 1977 are stark reminders of the potential for police to use deadly force without resorting to firearms. Boots, fists and other so-called less-than-lethal weapons, like batons and stun-guns, can and have been used by police to kill and to inflict serious injury. It is thus important to bear in mind the distinction between shooting and deadly force.

Worldwide, more has been written on the topic of police and firearms than on the police in relation to any other type of force or weapon. The accumulated writing on this issue comprises an extremely large body of discourse that outstrips the substantial volume of work on civilians and guns. The prominence of this matter in research may seem somewhat surprising considering the relative infrequency of police shootings in most Western countries (Geller & Scott, 1992). It is the potential of controversial police killings, and particularly shootings, to precipitate urban rioting which has made this an issue of considerable political import (Sparger & Giacopassi, 1992; Brenner & Kravitz, 1979).<sup>2</sup> Indeed it is widely acknowledged that:

"[n]o other single factor exceeds police use of deadly force in fostering distrust and even disorder within communities, especially minority communities" (Brenner & Kravitz, 1979:ix).

The main controversy that has emerged with regard to the police and firearms differs significantly from that which exists in relation to civilians and guns. It is the *use*

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1 See Geller and Scott (1992) on the USA, Sarre (1993) on Australia, Chappell and Graham (1985) on Canada, Uildriks and Van Mastricht (1991) on Scotland, Kruize and Wijmer (1991) on the Netherlands, and Plate and Schneider (1989) on West Germany.

2 Particularly in the USA since the sixties.

rather than the possession of guns by police that has been the key issue. Although legislative controls on the use of firearms and deadly force by police are a longstanding legal convention throughout the world, the stringency of such restrictions has varied across jurisdictions and time periods. More specifically, debates have tended to focus on the conditions under which the police ought to be legally permitted to employ deadly force in law enforcement and whether the range of circumstances should be reduced or expanded.

Those who have opposed additional limitations on police use of deadly force have tended to argue that this would effectively handcuff officers, thus reducing the efficacy of law enforcement and compromising the safety of civilians and police (Geller & Scott, 1992). On the other hand, those who have favoured further restrictions on police deadly force have claimed that these would protect civilians from unnecessary police violence, and would facilitate law enforcement by improving public trust in and co-operation with police.<sup>3</sup> It has been maintained furthermore that bolstering restraint in police use of deadly force can reduce the probability of violence between police and civilians, so enhancing officers' safety (Geller & Scott, 1992). The rationale is that if the police rarely resort to deadly force, then lawbreakers may feel it unnecessary to arm themselves with lethal weapons, or when armed, to resort to deadly force if confronted by police. It has also been emphasised that the unrestrained use of deadly force by police is criminogenic, in the sense that it has often resulted in rioting, and that limiting the police use of deadly force would reduce the likelihood of this kind of lawbreaking (Geller & Scott, 1992).

Perhaps predictably, it has been the police themselves who have been the most adamant opponents of further limitations on their use of deadly force. Until relatively recently, proponents of increased restraint by police were a subordinate voice. Since the mid-eighties there has been a gradual turn in the tide of police opinion regarding restraint in the use of deadly force. This has been a corollary to community policing which has been implemented in many countries over the last decade as a strategic response to accumulated public discontent with police, volatile race relations and increased public protest, especially by minority groups (Geller & Scott, 1992; Moore & Stephens, 1991[a]; Kelling, 1988). Today, it is not uncommon for police agencies to actively promote restraint in the use of force. At international level this objective has been embodied explicitly in the United Nation's "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", to which all Member States are bound (1990).<sup>4</sup> It has also been proposed that law enforcement officers ought to be key role models in developing a general culture of disarmament in society. To elaborate:

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3 Critical to the success of community policing.

4 Although with the limited status of so-called soft law.



"[t]he best strategy toward handgun disarmament may not be to 'chip away at peripheral owners, but to change the attitudes, values, and practices of the core ownership group - the police, other law enforcement personnel, and private security forces" (Jacobs, 1986:33).

The question of whether police ought to be armed with guns at all has received relatively scant attention (e.g. Jacobs, 1986; Brown, 1979). But of late, this issue has been intensively debated in Australia and Britain. The custom of arming the Australian police with guns is being re-evaluated, while in Britain the longstanding policy of *not* arming police with guns is being re-considered (Sarre, 1993; Waddington, 1988; 1986 resp). Interestingly, a recent poll showed that the bulk of the British police were opposed to being routinely armed with guns (The Argus, 16 May 1995). Generally speaking, however, disarming police of firearms is viewed as an unrealistic objective in most contemporary societies. Since lawbreakers are considered unlikely to voluntarily desist from arming themselves with guns, it has been argued that removing police firearms would place law abiding civilians and police at greater risk, and would undermine law enforcement (e.g. Zarb, 1986; Brown, 1979). In essence, the main concerns that have been raised about the *possession* of guns by police have been remarkably similar to those put forward regarding the police *use* of firearms, namely, the efficacy of law enforcement and the safety of the public and police.

Notably, the first empirical investigation of police shootings to be published concerned the Shanghai (China) police during the thirties and forties (Fairbairn & Sykes, 1987 [reprint]). However, the bulk of research on police shootings has been conducted in economically developed nations with the USA, Canada and Australia at the forefront.<sup>5</sup> By comparison, there has been a paucity of work on the use of deadly force by police in so-called third-world countries.<sup>6</sup> To date the vast preponderance of the accumulated writing on police use of deadly force pertains to North America; in no other country in the world has this issue attracted anywhere near as much research attention. By contrast, there has been relatively little investigation of police deadly force in countries in which the police have *not* been routinely armed with guns; Britain being the most renowned in this regard. The British have a long-standing tradition of arming only specialist police squads with guns, and providing the rank-and-file with firearms only when demonstrably

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5 See The British Columbia Police Commission (1990), Chappell and Graham (1985), Janssen and Hackler (1985) and Whittingham (1984) on Canada, Sarre (1993), Swanton and Psaila (1986) and Elliot (1979) on Australia, The New York Times (19 July 1991) on Israel, Kruize and Wijmer (1991), Roest (1989[a], 1989[b]) and Boek (1987) on the Netherlands, Burton (1990) and McKenzie and Gallagher (1989) on Britain, Waddington (1993[a], 1991, 1990), Spyut (1986) and Hadden (1985) on the military police and other security forces in Northern Ireland, Uildriks and Van Mastright (1991) on Scotland, and Plate and Schneider (1989) on West Germany.

6 Although there is some work on Argentina, Brazil and Jamaica, see Chevigny (1990).

necessary (Wolfenden, 1989; Greenwood, 1969). This country also has very stringent legal restrictions on the police use of deadly force (Burton, 1990; McKenzie & Gallagher, 1989). Indeed, the low incidence of police shootings and associated public protest in the UK have been noted as the main reasons for the limited research on this topic. But as firearms have come to be used more frequently in British law enforcement in recent years, there has been a corresponding increase in popular and academic interest in this field and additional emphasis on restraint in the use of deadly force by police (e.g. Waddington, 1993[a], 1991, 1988, 1986; Harper, 1992; Woollons, 1992; Poole & Sampson, 1991).

Throughout the world public order policing, which is arguably the most visible form of contemporary police activity, has tended to draw major public attention and criticism. This constitutes one of the most politically volatile issues in the contemporary policing arena and there has been a marked growth in discourse on the subject of the police use of force in public protests.<sup>7</sup> Even in countries like Britain where there has been relatively little work on the use of deadly force by police, there has been a significant amount of writing on the use of force in public order policing (Waddington, 1991). Although this is a broader subject than the use of deadly force and firearms by police, it is being recognised increasingly that, to effectively control deadly force usage, the entire continuum of force must be taken into account: from no force, to less-than-lethal forms, to lethal force (e.g. Alpert & Fridell, 1992; Scharf & Binder, 1983). It is thus considered preferable to treat the use of guns by police as an integral aspect of police conduct.

As the bulk of the research on police use of deadly force including guns has been conducted in the North American context, most of the literature reviewed in this chapter concerns the USA. Nevertheless, where available and relevant, findings relating to other countries have been included and work on South Africa has been presented in Chapter Five.

## **A CRITICAL OVERVIEW OF CENTRAL ISSUES**

### **The Impetus for Research in the USA**

It is informative to begin by addressing the question of why North American studies have dominated research on the police use of guns over the past 35 years. In short, this appears to be the product of politics. Since the sixties many incidents in which excessive force has allegedly been used by police have been followed by active and frequently violent public protests.<sup>8</sup> Furthermore, it is perceived *racial discrimination* in the use of force by police that has been the most potent precipitant of civilian rioting in the USA (Geller & Scott, 1992). The riots that followed the acquittal in 1992 of the four white police officers who severely beat Rodney King, a

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7 See Kruize and Wijmer (1991) on the Netherlands, and Waddington (1991) on Britain.

8 See Scharf and Binder (1983) and Geller and Scott (1992) on US protests.

black man, are perhaps the most recent reminder of the current explosive potential of this issue (Skolnick & Fyfe, 1993). However, it is the police use of guns that has most regularly drawn public criticism in the USA. Indeed, public outcries about this matter began to surface in the mid-1850s, shortly after North American police were first issued firearms on a routine basis (Sherman, 1980[a]). Certainly during this century the State has consistently acknowledged that the use of guns by police is a matter of critical import. Perhaps the first formal statement in which police shootings were identified as a core precipitant of urban riots was made in 1967 by the President's Commission on Law Enforcement and the Administration of Justice (Sparger & Giacomassi, 1992). One of the key recommendations made by this Commission was the need for policy-oriented research on police use of deadly force. The government responded by making large amounts of funding available for such work. The State's prioritising of the issue, combined with the availability of research funding, provided the initial impetus for the development of this research field in the USA. It is noteworthy that neither the political importance of, nor the research funding for, work in this arena have waned significantly over time. In 1978 the National Institute of Law Enforcement and Criminal Justice named police deadly force as a national priority in terms of research; second only to community studies (Triplett, 1979).<sup>9</sup> From the mid-sixties to the late eighties calls for further investigation of this issue have been one of the most regular recommendations made by government riot commissions (The Washington Post, 4 May 1992).<sup>10</sup> Most recently the Rodney King case has spurred interest in this field and in response the United States (US) Department of Justice has funded a multifaceted inquiry into the use of force by and against police in the USA today (The National Institute of Justice (NIJ), 1991). In view of these enabling forces, it is not difficult to understand why work on police deadly force in North America has developed into a major contemporary field of research, both inside and outside academia.

### **Core Research Objectives**

Incidents in which police have used deadly force, and particularly firearms, have been counted, described, and explained, and interventions aimed at controlling such force have been proposed and their impact evaluated. In short, these have been the key objectives of research in this field to date (Geller & Scott, 1992). Studies aimed at counting have tended to address the question of how many police killings and shootings take place in particular areas over certain time periods, as well as temporal and spatial trends. Since police shootings have been constructed as a specific social problem, the objective of some of the quantitative work has been to provide measures to assist policy-makers and politicians in deciding what level of police

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9 Part of the US Department of Justice, now the National Institute of Justice (NIJ).

10 See Geller and Scott (1992) on riot commissions.

shooting is to be deemed acceptable, and thus what degree of change is required.

Researchers whose goals have been descriptive and/or explanatory have investigated a wide range of variables including, *inter alia*, the characteristics of victims and police (perpetrators), and the circumstances and consequences of police shootings. Although a lot of studies have addressed the question of whether there is racial discrimination in police decisions to shoot, most of the research has sought to identify factors that affect the likelihood of police shootings, so as to better inform strategies for the reduction of death and injury. Not surprisingly, there has been a considerable amount of work on the subject of controlling police gun use, the purpose being to explore and assess the efficacy of mechanisms designed to achieve goals like: decreasing deaths caused by police, reducing incidents in which officers fire shots, increasing survival rates of victims shot by police, and improving officers' safety.

### Key Methods

The examination of existing sources of information,<sup>11</sup> the generation of new data by asking people questions,<sup>12</sup> or by observing phenomena either in the field or under experimental conditions, are the three basic methods by which data are generally collected in social studies, although there are many potential permutations and combinations of these techniques. The secondary analysis of information has been the most favoured method of data collection in research on police use of guns. Indeed there have been relatively few observational studies of police shootings in real-life situations. This has mainly been due to restricted access, as police managers have generally refused to permit civilian researchers to accompany officers and observe their behaviour in the field. Although the political sensitivity of the issue has clearly been a prime motivation for decisions to disallow so-called ride-along research, concerns about researchers being harmed or impeding police-work have also been proffered as reasons. Nonetheless, some observational studies have been conducted (e.g. Bayley & Garofalo, 1989; Fyfe, 1989[a], 1988[c]; Cruse & Robin, 1972; Reiss, 1971[a], 1971[b]). Whilst providing valuable insights into police behaviour, these investigations have generated very small samples which have seriously diminished the reliability and external validity of the findings. However, the fact that few shooting incidents took place during relatively lengthy periods of observation constituted a significant finding in itself, namely, that police tend to shoot in only a small proportion of their interactions with civilians (e.g. Fyfe, 1981[b]). It has been estimated that it would take an average of two weeks of observation in order to witness one incident in which an officer even drew his/her firearm (Sherman, 1980[a]).

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11 Secondary or archival analysis.

12 Generally using interviews, questionnaires or self reports.

In view of the impediments to field observation and the ethical constraints that inhibit experimental manipulation in actual situations, some researchers have chosen to investigate police behaviour under artificial or simulated conditions (e.g. Doerner, 1991). Securing access to police officers for this kind of research has been easier than obtaining permission to conduct field observations. Perhaps the most common experimental technique used to date has been to present officers with written or filmed scenarios in which shooting is either depicted or a realistic option. Officers have then been required to critically evaluate the conduct with which they have been presented and/or to comment on how they would have behaved under similar circumstances. Researchers have also employed self reports, interviews and questionnaires to elicit police officers' views on particular shootings, as well as their attitudes to deadly force in general (e.g. The Portland Oregonian, 26 & 27 April 1992; Tercek, 1992). The main shortcoming of this type of study is the artificiality of the experimental circumstances which tend to limit the reliability and validity of the findings. Results based on officers' attitudes to deadly force and self reports about how they believe they would behave in particular situations are also of dubious validity, because attitudes do not reliably predict behaviour. When people are asked to respond to value-laden issues, they tend to provide socially acceptable responses and their behaviour often differs from their beliefs about how they will behave.

More recently, developments in simulated conditions have boosted the potential for conducting more reliable experimental studies of police gun use. A number of simulated environments -- designed to increase restraint and improve officer safety in potentially violent situations -- have been developed as part of state-of-the-art police training programmes. These comprise life-like environments and sophisticated simulations of real life occurrences in which officers must make decisions about whether and when to use their firearms. For instance, the Tampa Police Training Academy have constructed an entire city block for training purposes (Korzeniewski, 1990). The availability of such facilities has begun to encourage observational work on police gun use and ought to improve the quality of future findings (e.g. Doerner, 1991). Furthermore, the investigation of all aspects of policing has been fuelled by changes in the attitude of police management toward research, which has accompanied the adoption of a community style of policing. The nineties have seen many police managers allowing researchers greater access to police records and actively encouraging operational research by outside agencies, as well as initiating in-house studies.

Nevertheless, for many decades blocked access enhanced the popularity of secondary analysis in the investigation of police shootings. The first obstacle to secondary analysis is of course finding a suitable source of primary data. Although highly problematic, newspaper reports of police shootings have been used for this purpose (e.g. The Public Interest Law Center of Philadelphia, 1979, 1975; Kohler, 1975[b]). The major weakness inherent in this data source is that incidents that are

published are not representative of police shootings in general. Hence, samples drawn from news reports are inevitably skewed which undermines the validity of the resultant findings.

It is information routinely collected by government agencies over lengthy periods that has been employed in the majority of secondary analyses. In the USA there are three main sources of primary data pertaining to police use of deadly force. The Federal Bureau of Investigation (FBI)<sup>13</sup> and the National Center for Health Statistics (NCHS),<sup>14</sup> have been compiling statistics on police justifiable homicides for many decades. Individual police agencies are the third source of primary data; many agencies now regularly collect information on the use of force by their officers. Although quality and content vary across police agencies, the following types of information have commonly been recorded: incidents in which officers have used force; have killed or injured civilians; police shootings; public complaints against officers and outcomes of investigations into allegations of misconduct.

The limits of the original data are a fundamental disadvantage inherent to secondary analysis. The primary data available on US police shootings is problematic in many respects. The FBI and NCHS statistics on police justifiable homicides are not only unreliable, but lack richness of detail. Because these data pertain to lawful and intentional police killings, they do not reflect all shootings or deadly force incidents. Unintentional and unlawful killings are excluded, as are cases in which deadly force has not been fatal. The use of police justifiable homicides as the dependent variable in studies of police shootings and deadly force has been criticised vehemently (e.g. Fridell, 1989; Binder & Fridell, 1984).

Information collected by individual police agencies has generally been more comprehensive and reliable than the FBI and NCHS data, and hence, a preferred source of data for secondary analyses of US police shootings. But, while police agencies have denied researchers access to their records, those endeavouring to conduct secondary analyses have had little choice but to use the available, yet deficient, alternatives. In recent years, with increased openness to scholarly investigation on the part of the police, researchers have begun to enjoy greater access to police records. As the issue of police accountability has gained increasing political purchase, there has been a trend toward improving the information collected by police agencies, especially in relation to the use of firearms. Many contemporary North American police departments routinely record a wide range of detailed information that is highly relevant for research purposes. To illustrate: the New York City Police Department (NYPD) publishes a detailed annual report on all shootings in which the police have been involved; the South Carolina Police Department records all incidents in which their officers point firearms; and a number of Canadian police agencies have begun to log instances in which their officers *avoid*

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13 As part of the FBI's Uniform Crime Reporting System, running since 1940.

14 Extracted from death records.

killing by employing less-than-lethal tactics (Geller & Scott, 1992; Greenberg, 1990; Jamieson *et al*, 1990 resp). Although police records constitute a valuable alternate source of primary data for research, which is certainly a boon to contemporary studies of police deadly force and gun use, the limitations of this information should not be disregarded. In particular, reliability is probably low because the main purpose for collecting these data is to decide culpability, hence officers are motivated to present their actions and those of their colleagues in the best possible light to avoid censure.<sup>15</sup> Despite these shortcomings, departmental records are the best available source of primary data on the use of guns by the police in the USA.<sup>16</sup>

## **Research Aimed at Quantifying**

### ***Introductory Comment***

Counting is a common starting point in many research fields as it facilitates comparisons over time and space. The initial step is usually to establish a baseline measure for a specific locale and period, and use this to monitor temporal changes in the area and different jurisdictions over the same time. Baselines are also essential for assessing the impact of interventions and identifying relevant variables. Hence, counting the frequency of police shootings has been a primary objective of much work in this field. In view of the relative infrequency of police shootings and the abovementioned difficulties associated with other research methods, the secondary analysis of existing data has long been the most feasible method of data collection for such quantitative studies.

### ***National Counts***

There have been relatively few investigations of the frequency of police shootings and deadly force incidents in the USA as a whole,<sup>17</sup> especially when contrasted with the large amount of work conducted in relation to smaller jurisdictions such as cities and states. This has mainly been due to the lack of reliable primary data on police deadly force nationwide. Until relatively recently the flawed FBI and NCHS annual figures on police justifiable homicides were the only such national statistics available.

According to the NCHS between 250 and 300 justifiable homicides were committed by the US police p.a, but the FBI estimate was between 300 and 500 (Geller & Scott, 1992:59).<sup>18</sup> Besides not accurately reflecting all police shootings or deadly force incidents, these data grossly underestimate the number of police

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15 See Crank *et al* (1993) and Skolnick and Fyfe (1993) on the police code of loyalty.

16 As at 1992.

17 See Geller and Scott (1992), Fyfe (1988[b]), Sherman and Langworthy (1979), Harring *et al* (1977), Sherman (1977), Kobler (1975[a], 1975[b]), Takagi (1974) and Robin (1963).

18 See Geller and Scott (1992:503-4) for FBI figures from 1950 to 1990.

justifiable homicides:<sup>19</sup> the NCHS figures by as much as 50%, and the FBI statistics by up to 54% (Geller & Scott 1992; Blumberg, 1989; The New York State Commission on Criminal Justice (NYSCCJ), 1987; Sherman & Cohn, 1986; Matulia, 1985; Sherman & Langworthy, 1979). As an alternative, Fyfe (1988[b]) calculated a national estimate of 1000 police justifiable homicides p.a. using the FBI figures for large cities, which are allegedly more reliable than the national statistics (Geller & Scott, 1992). However, since the frequency of police justifiable homicides is believed to be significantly higher in large cities than in smaller urban and non-urban areas, this national estimate is considered to be somewhat inflated (Geller & Scott, 1992).

Reliable statistics on the national frequency of police shootings as opposed to justifiable homicides have also been scarce. Geller's annual estimate of 600 fatal police shootings in the USA is one of the few available national figures (1986:2).<sup>20</sup> Interestingly, this author also calculated the following range of related approximations: 3600 shots fired at suspects, 1800 of which miss people and 1800 of which strike people, 1200 causing injury and 600 causing death.<sup>21</sup> These kinds of data serve to highlight the fact that studies of police shootings, and deadly force more generally, in which fatalities are employed as the dependent variable deal only with the tip of the iceberg. There has been much critical debate over the most appropriate core dependent variable for the investigation of police shootings. The popular use of *fatal* shootings as the key variable has drawn particularly severe criticism. The essence of the critique is that there is a range of possible outcomes when a shot is fired (see Table 4.1). Research focused exclusively on deaths -- the most serious outcome of shooting -- has at best produced a partial, and at worst a distorted, understanding of police shootings. A similar line of criticism has been raised in relation to studies that have been limited to intentional or lawful shootings. Monitoring shots that are fired unintentionally is of importance because these may harm innocent third parties or damage property. The value of identifying factors contributing to unlawful police shootings would seem self evident. The analysis of outcomes of shots fired by police facilitates a more precise identification of problems than frequency counts of fatal shootings. Analysed together, measures like strike and fatality rates provide valuable insights.

The strike rate reflects the proportion of shots fired that hit intended targets, whilst the fatality rate indicates the proportion of shots fired that result in death. To illustrate further: establishing that there is a relatively low strike rate along with a high number of shots fired intentionally suggests at least two problems: (1) the police may be firing their guns too frequently and this may indicate the need for training in

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19 Local and/or state data were aggregated and compared to national figures to calculate the percentage error. See Blumberg (1989), the NYSCCJ (1987) and Sherman and Cohn (1986) on reliability.

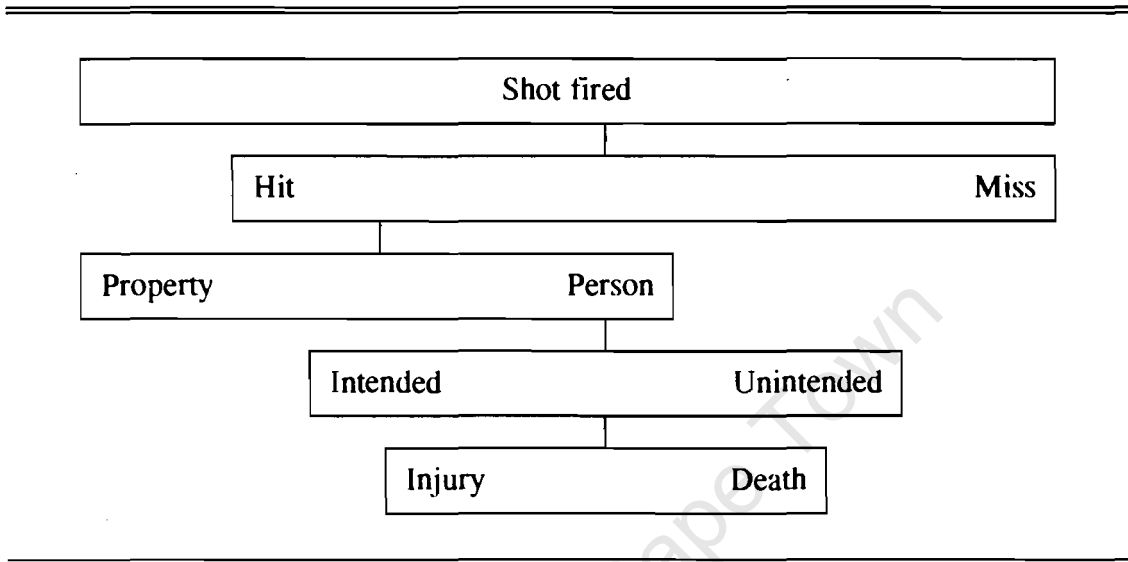
20 Derived from accumulated research findings.

21 Also see Binder and Fridell (1984:161).



the use of less-than-lethal tactics, and (2) a low strike rate shows that a high proportion of shots fired miss the intended targets. Such conduct may result in a deflated fatality rate, but it poses an increased threat to innocent bystanders and property, in which case training in shooting proficiency may be required.

**Figure 4.1:**  
**Potential Outcomes of a Shot.**



Fatality rates are not only positively related to the number of shots fired, but are affected by a range of other factors such as the types of firearms and ammunition used, shooters' marksmanship, the location and number of gunshot wounds and, of course, the availability of prompt and efficient medical assistance (The Portland Oregonian, 22 April 1992; Doerner 1988, 1983; Doerner & Speir 1986).<sup>22</sup> Therefore it cannot be assumed that a higher rate of fatal shooting is due to an increase in shots fired. It may, for example, be the result of improved bullet placement by officers. So the fatality rate may vary even when the number of shots fired stays constant. In short, if the objective is to reduce the fatality rate there are many points of intervention, and better data can enable the selection of the most appropriate.

Today police justifiable homicides are not generally used as anything more than a *partial* indicator of the frequency of fatal shootings and sometimes as an extremely *crude* gauge of the incidence of police deadly force. It is now widely accepted that, if police shootings are to be properly understood and controlled, *all* shots fired by officers irrespective of intention, lawfulness or outcome, must be taken into account (e.g. Alpert & Fridell, 1992; Geller & Scott, 1992; Fridell, 1989). Although data on shots fired are not currently available for North America as a whole, this information is now being regularly recorded by many individual police agencies.

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22 Also see The NYPD (1990, 1989, 1988), The Chicago Tribune (4 September 1988, 22 July 1988) and Geller (1988).

Overall, it must be concluded with some dismay that, despite the substantial amount of research that has been conducted over the past thirty-five years, the basic frequency of police deadly force incidents and shootings in the USA has not even been established and there is no certainty about temporal changes in rates of police deadly force use and shootings. Perhaps more alarming is the fact that: "... the US still does not have a reliable database that reports precisely how many people are killed, let alone wounded or shot at but missed, by police nationwide" (Geller & Scott, 1992:46) Scholars and practitioners across a range of disciplines have made earnest pleas for the establishment of a national standardised reporting system and a centralised repository for data on the use of deadly force by police, specifically gun use.

***Smaller Jurisdictions***

In contrast to limited work on national counts, there has been a plethora of studies on police shootings in a wide range of smaller jurisdictions and over various periods. The majority of these investigations have focused on single large cities or have compared shootings across urban areas.<sup>23</sup> There has been less research on districts and neighbourhoods, and counties and states.<sup>24</sup> Sherman and Cohn (1986) and Geller and Scott (1992) aggregated FBI data on police justifiable homicides in 50 large US cities between 1970 and 1989. Although underestimates, these have been widely recognised among the most comprehensive and reliable figures available.

**Table 4.2:**  
**Police Justifiable Homicides in 50 US Cities, 1970-1989.**

Years	Averages
1970 - 1974	300
1975 - 1979	244
1980 - 1984	197
1985 - 1989	251

*Source:* Geller and Scott (1992:118).

According to Table 4.2 the average number of intentional, lawful killings perpetrated by police in large cities decreased consistently from 1970 through to 1984 and then rose between 1985 and 1989. However, the authors have warned that it is too soon to consider any change a trend, and that the latest figure should be treated with caution as it was adjusted for the estimated under-count.<sup>25</sup> Nevertheless, the police

23 See Geller and Scott (1992) on city-based research.  
24 See Nowicki and Stahl (1978) on police districts.  
25 From 142.

are responsible for only a small proportion of homicides in North America (Geller & Scott, 1992). A number of relative measures also suggest a decrease in police justifiable homicides between 1970 and 1984. For instance, in 1970 police justifiable homicides comprised five per cent of homicides, but by 1984 this figure had dropped to two per cent (Sherman & Cohn, 1986:3). Moreover the rate of lawful killing by big-city police in the USA was reduced in the face of increasing community violence (Geller & Scott, 1992).

While smaller scale quantitative investigations have provided useful data on specific areas and periods, the low temporal and spatial generalisability of most of these findings has limited their utility. More specifically, the aggregation and comparison of results has been inhibited by inconsistencies in the operational definitions of the main dependent variables. Whilst shootings have been treated as the only form of deadly force in some studies, others have included, *inter alia*, high speed vehicular pursuits, chokeholds and attacks by police dogs, and incendiary devices (Nugent *et al*, 1989; The Washington Post, 7 May 1992; The New York Times, 20 September, 1992 *resp*).<sup>26</sup> Thus, despite the large volume of research data on police shootings in North American cities, most of the results cannot be compared to reveal differences and similarities, nor can many be amalgamated to provide information on larger areas. The importance of standardising dependent variables is one of the key realisations that has emerged from unsuccessful attempts at distilling conclusions from such research. The preferred basic variable for contemporary research is all shots fired by police. Fatal shootings were the most common variable employed in earlier studies but researchers now have better access to shots-fired data. More recently a wider range of factors have been included such as firearm hits, misses, injuries, deaths, and unintentional and intentional shootings (e.g. The Los Angeles Police Department (LAPD), 1992; The San Diego Police Department, 1992; Cerar, 1991; The Kansas City Police Department (KCPD), 1991; The Santa Ana Police Department, 1991; The Philadelphia Police Department, 1990).

Frequency counts -- the most basic quantitative building blocks -- are generally used to calculate more meaningful *relative* measures. Indeed rates are essential for valid spatial and temporal comparisons. At the very least, differences in the sizes of the populations and police forces concerned must be considered when comparing police shootings in different places and times (e.g. Sparger & Giacomassi 1992). It is also critical to consider levels of police hazard as indicated by factors such as the frequency of arrests in which suspects are armed with firearms; arrests for violent offences; reported homicides and gunshot injuries and deaths (Geller & Scott, 1992). Such rates are now routinely calculated by a number of big-city police departments including: Atlanta, Chicago, Dallas, Houston, Kansas City, New York City, Metro-Dade County, Philadelphia, St Louis and San Diego.

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26 Findings from deadly force research have been incomparable for a similar reason.

Bearing in mind the non-comparability of most findings, it is still interesting to note that various comparisons have indicated consistent and substantial spatial and temporal differences.<sup>27</sup> Geller and Scotts' (1992) comparison of shooting rates in 12 large US cities has been selected to illustrate these points further.<sup>28</sup> Although the authors caution that the data are not strictly comparable, this work is arguably one of the best comparative studies available. The research demonstrated a wide variation in rates of shooting across cities after relevant differences had been taken into account. To illustrate: in the early eighties rates of shooting ranged from four per 100 people in Los Angeles to 18 in St Louis, whilst in the early nineties the rates ranged from three per 100 in Dallas to 22 in San Diego (Geller & Scott 1992:573).<sup>29</sup> Similarly, a wide range of strike and fatality rates have been reported for different cities.<sup>30</sup> For example, in 1991 shooting fatality rates ranged from a high of 88% for the Milwaukee Police Department to a low of 18% for the Baltimore Police Department, while strike rates ranged from 100% for the San Francisco Police Department to 25% for the Memphis Police Department (The Dallas Police Department, 1992[a]).

*Temporal* differences were also apparent when shooting rates in the early eighties were compared to those in the early nineties. Rates had increased in Kansas City, Los Angeles and San Diego; but had decreased in Chicago, Dallas, Metro-Dade, St Louis, New York City and Philadelphia, and had remained constant in Houston and Atlanta (Geller & Scott 1992:573). These, and other indications of recent increases in police shooting rates in certain cities, have been noted as a potential cause for concern considering the long term downward trend that characterised most US cities from the seventies to the mid-eighties (Geller & Scott 1992).

Despite the methodological flaws inherent to such comparisons, the consistent direction and sizable nature of the variations suggest that significant spatial and temporal differences do exist (e.g. Geller & Scott 1992; Sherman & Cohn 1986). Wide variations in rates of shots fired, strikes and fatalities also highlight the importance of understanding problems in context. All too often ineffective interventions have been instituted before the nature of a particular problem has been sufficiently understood. One of the most important lessons learned from attempts to quantify police shootings and deadly force use is that these phenomena are complex and multifaceted. There is no *single* problem associated with police gun use but rather a range of issues that vary across time and place, hence requiring the mapping of each constellation of problems so that appropriate interventions can be tailored

27 See Horvath (1987), Horvath and Donahue (1982) on cities, Geller (1989, 1988), Geller and Karales (1981[a]), Nowicki and Stahl (1978) on districts and neighbourhoods.

28 Atlanta, Chicago, Dallas, Houston, Kansas City, Los Angeles, Metro-Dade, New York City, Philadelphia, St Louis, San Diego and Santa Ana.

29 See Geller and Scott (1992:121) for the five-year average rates on all 12 cities.

30 See Geller and Scott (1992:97-9) for examples.

and realistic objectives set.

Significantly, and despite variations, police shootings are *not* as common as might be expected, particularly when viewed in relation to police-civilian interactions in general (e.g. The New York Times, 4 September 1990; Scharf & Binder, 1983; Fyfe, 1981[b]; Sherman, 1980[a]; Reiss, 1971[a]). It is informative to note that the average North American officer has to work between 139 and 7692 years before s/he is likely to fatally shoot a civilian (Sherman & Cohn, 1986:i).<sup>31</sup> The vast majority of interactions between police and civilians in the US are not violent and shootings are not a routine part of everyday policing (Bayley & Garofalo 1989).

### ***Deadly Force against Police***

It has been customary to study the use of deadly force by police against civilians. Increasingly, however, it has been argued that the police use of guns, and indeed any kind of force, cannot be understood fully without also examining the use of force by civilians against police. The premise here is that police use force mainly in *response* to the threat of violence by civilians. In other words, police and civilian conduct are dynamically inter-related rather than separate phenomena. Hence, it is likely that higher levels of police shooting occur in areas where officers are frequently confronted with violence. For this reason research has been expanded to the use of deadly force by and *against* police and, more specifically, to *police-involved* shootings (Geller & Scott, 1992).

It is now generally agreed that police hazard is a highly significant factor affecting officers' decisions to use their firearms. However, there has been much controversy over how best to measure the potential danger with which police are confronted or, more specifically, how to predict the likelihood of civilians employing violence against police (e.g. Bayley & Garofalo 1989; Fyfe 1988[c]; Bayley 1986; McIver & Parks 1983; Sykes & Brent 1983). To date a range of potential indices have been suggested such as: homicides in the background population, firearm homicides, civilians injured and killed by gunfire, deaths and injuries suffered by police officers, arrests made for violent offences, and arrests involving armed suspects (Geller & Scott, 1992). Some researchers have insisted on much wider operational measures of police hazard, like the frequency of interactions between police and civilians in which there are disputes or in which the police question suspicious persons (e.g. Bayley & Garofalo, 1989).

In contrast to the lack of dependable information on the use of deadly force by US police, there is a wealth of reliable, longitudinal data available on the use of deadly force *against* police.<sup>32</sup> Since 1960 the FBI has published data on the number

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31 Jacksonville and Honolulu resp.

32 See Margarita (1980[a]), The Chicago Tribune (16 May 1992), Van Raalte (1990) on longitudinal studies.

of police killed in the line-of-duty each year at national, state and city levels. From the late seventies the annual statistics included officers assaulted in the line-of-duty (e.g. The FBI, 1992[i]; Garner & Clemmer, 1986). In addition, detailed records on the outcome of assaults on police have been kept by the International Association of Chiefs of Police (IACP) in collaboration with the Du Pont-Kevlar Survivors' Club -- an affiliate of the manufacturers of soft body armour (SBA) -- since SBA was introduced among North American police in 1972 (The IACP/Du Pont-Kevlar, 1992).

Significantly, and irrespective of the measures used, the data show that US police are less likely to be killed in the line-of-duty today than they have been at any other time in the past thirty years (Geller & Scott, 1992).<sup>33</sup> Furthermore, the probability of police being killed has diminished constantly since 1975, as has the likelihood of officers being shot fatally. Indeed by 1990 US police and civilians faced the same risk of homicide (Geller & Scott, 1992). Attempts to explain these trends have given rise to further noteworthy findings. From 1978 to 1984 the rate of assaults on police with deadly weapons decreased, as did rates of police fatalities and injuries, but from the mid-eighties the *injury* rate among police began to increase. This pattern has been attributed mainly to the wearing of SBA by police: a person who is shot in the torso when wearing SBA is bruised but generally survives. It has thus been hypothesised that the increased survival rate of officers who are shot has been due to the wearing of SBA, as has the elevated injury rate which reflects the increased incidence of contusions. It is generally agreed that the wearing of SBA by police is a major contributory factor to the lowered contemporary police fatality rate. However, there are other factors in operation for it has been estimated that:

"... if soft body armour were not available, the chances of American police officers dying in 1991 at the hands of assailants still would have been lower than at most other times in the past 20 years" (Geller & Scott, 1992:134).

Although US officers are now at less risk of being killed than previously, this is *not* the perception among police. To the contrary, most officers are of the opinion that their job has become more dangerous (The Portland Oregonian, 26 April 1992; Tercek, 1992). Police commonly believe that there is greater violence on North American streets today due to crack cocaine dealing and an increased prevalence of assault firearms (e.g. Geller & Scott, 1992). Because these views influence officers' behaviour in the field, it is crucial that police *perceptions* of potential hazard, and not just the actual level of danger, be taken into account when attempting to understand and modify their use of guns and other types of force (e.g. The Portland Oregonian, 27 April 1992; Tercek, 1992; Sparrow *et al*, 1990).

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33 See Geller and Scott (1992:125-6) for figures.

Of course, officers may also be killed or injured *unintentionally*. This issue began to attract attention in the mid-eighties when, for the first time since 1962, the number of US police who died in accidents surpassed the number who were killed intentionally (Garner & Clemmer, 1986).<sup>34</sup> Interestingly, however, this pattern has not characterised fatal shootings of police: the proportion of unintentional lethal shootings has been relatively insignificant, e.g. about eight per cent of police homicides in 1990 (Behm, 1992; The FBI, 1991[i]). The statistical picture painted applies to the USA as a whole and hence to the *average* police officer. It should be emphasised that there are major variations in rates of police killings and assaults across different jurisdictions (The St Louis Metropolitan Police Department, 1992).<sup>35</sup> In short, some areas are more dangerous for police than others.

### ***Deadly Force and Private Law Enforcement***

In the USA policing has been increasingly privatised, particularly over the past decade (Cunningham *et al*, 1991; McCrie, 1988; Cunningham & Taylor, 1985). By 1990 approximately 1.5 million people were employed as private security personnel (Cunningham *et al*, 1991:1). The conduct of private security officers (PSOs) has been identified as a critical, but generally neglected, factor in the deadly force equation. Since many PSOs are armed with firearms, gun use by this group has probably had a significant impact on levels of deadly force by and against the police. For instance, the downward trend that has been noted in police justifiable homicides in large cities over the past two decades could be a result of the use of deadly force by PSOs (Geller & Scott, 1992; Sherman & Cohen, 1986). Unfortunately, however, systematic data have not been kept on the frequency or outcomes of shots fired by PSOs and, hence, the nature and extent of the hypothesised effect has yet to be established (Geller & Scott 1992). It is gradually being acknowledged that the impact of PSOs, and particularly their use of guns, must be taken into account in the explanation of police-involved shootings in the USA today. It has also been proposed that, like the public police, private law enforcement agencies ought to be required to record and report on the use of force by PSOs (Geller & Scott, 1992).

## **Descriptive and Explanatory Research**

### ***Introductory Comment***

Because deadly force use by police is a sociopolitically important issue, there has been a substantial amount of policy-oriented research in this field. Much of the work has focused on identifying and explaining factors affecting police gun use and, more specifically, characteristics of the circumstances and people in police-involved shootings, and the broader context in which force is employed, including aspects of the communities involved and macro-level structural variables.

34 This pattern prevailed until 1991, see The FBI (1992[i] to 1989[i]).

35 The larger the population the higher the risk, see The FBI (1991[i], 1989[i]).

### ***Characteristics of Civilians Killed by Police*** <sup>36</sup>

The research data demonstrates unequivocally that the victims most commonly killed by police in the USA are younger black males aged between 17 and 30 (e.g. Sorensen *et al*, 1993; Geller & Scott, 1992; Geller & Karales, 1982, 1981[a]; 1981[b]; NYCCJ, 1987; Fyfe, 1978; Milton *et al*, 1977).<sup>37</sup> It has also been shown consistently that in most countries the majority of those killed by police are younger males but that black people are *not* over-represented in all nations.<sup>38</sup>

As might be expected given the current North American law on the use of deadly force by police, threatening behaviour by victims is the most common precipitant of police homicides. In other words, according to police the majority of their homicide victims are killed because they are considered to be dangerous. It has been shown more specifically that significantly more police homicide victims are: (1) armed, especially with firearms (2) demonstrate violent intentions, generally by threatening to use a weapon; (3) confront officers; and (4) have previous convictions for serious offences or have been suspected of such offences (Sorensen *et al*, 1993; Donahue & Horvath, 1991; Dwyer *et al*, 1990 resp). Similarly, the only published national data for the USA indicate that in 1989 the top three precipitators of police justifiable homicides were: attacks on officers and civilians, the perpetration of serious offences, and resisting police arrest (The FBI 1989[i]).

### ***The Controversy over Police Racism*** <sup>39</sup>

The fact that black people are more likely to be killed by police than whites, and the claim that police kill mainly in response to the threat of violence, have become core elements in a politically loaded dispute over whether there is racial discrimination in the use of deadly force by US police. This issue has attracted a great deal of research attention and constitutes an ongoing controversy in North America (Geller & Scott, 1992; Blumberg, 1986).<sup>40</sup> Many studies have begun by examining the race of victims and there is currently a wealth of accumulated data indicating that black people are over-represented as victims of police homicides and shootings in North America.<sup>41</sup> This finding reinforces the belief widely held among racial and ethnic

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36 Some findings on police homicides have been included because much of the US data does not pertain only to fatal shootings.

37 Also most vulnerable to homicide by civilians, but police victims were younger, see Sorensen *et al* (1993).

38 See Kruize and Wijmer (1991) on Holland, and Chappell and Graham (1985) on Canada.

39 Black refers to all people of colour.

40 See Jefferson (1988) on the UK.

41 See: The St Louis Metropolitan Police Department (1992), The Dallas Police Department (1990), Alpert (1989[b]), Geller (1989), Horvath (1987), The NYSCCJ (1987), Blumberg (1983), Binder *et al* (1982), Horvath and Donahue (1982), Fyfe (1981[a]), Geller and Karales (1981[b]), Meyer (1980[a], 1980[b]), Sultan and Cooper (1979), The National Minority Advisory Council (1978), Milton *et al* (1977), Kohler (1975[a]), and Robin (1963). Also see



minority groups that police discriminate against black people generally, and in their use of deadly force (e.g. Browning & Cao, 1993; Cordon, 1985; Peirson, 1978; The New York Times, 17 September 1974; Jenkins & Faison, 1974; Takagi, 1974).

A range of related findings have been forwarded to support the broader hypothesis that racial bigotry systematically shapes police practice. Numerous authors have maintained that racism affects basic decisions about whether police engage with civilians (e.g. Hinds, 1979; Takagi, 1974; Forslund, 1972; Sutherland & Cressey, 1970). A few experimental studies have demonstrated racial discrimination in police decisions to arrest people suspected of traffic violations, so-called domestic disturbances, public intoxication and disorderly conduct (e.g. LaFree *et al.*, 1992; Powell, 1990, 1981). There is also some evidence that police employ more forceful tactics when arresting black suspects, even when this is not strictly necessary. It has been established that some white officers use racist language; unacceptable behaviour which is often condoned by police managers (The Independent Commission on the Los Angeles Police Department, 1991). This was one of the provocative findings made by the Christopher Commission which investigated the LAPD after the beating of Rodney King in 1991. Today, there are few who would seriously argue that racism does not exist at an attitudinal level among white police in North America. The contentious issue is whether racist opinions routinely affect police conduct.

The topic of police decision-making on the use of force has attracted substantial research attention (e.g. Dwyer *et al.*, 1990; Scharf & Binder, 1983; Binder *et al.*, 1982; Geller, 1982[h]; Hayden, 1981). The investigation of police racism has progressed by examining the perceptual processes affecting officers' decisions to use deadly force. This approach shifts the focus to the more covert mechanisms by which racist attitudes shape police use of force. One of the main theories developed in this sphere has been based on Schank and Abelson's (1977) notion of *scripts*: cognitive structures that facilitate the comprehension of stereotypical situations and allow inferences about probable outcomes to be made quickly. The basic rationale is that, in order to protect themselves and others, police must learn to rapidly assess the potential danger in any given situation. They thus use mental scripts comprising sets of stereotyped cues which provide early warning of potential threat (e.g. Waegel, 1984[a]; Bittner, 1975, 1973; Skolnick & Gray, 1975; Van Maanen, 1974). It should be emphasised, however, that these danger-cues are not necessarily accurate predictors of potential threat which means that an officer may perceive a harmless suspect to be dangerous. The information comprising police cognitive scripts is learned from experience, both direct and vicarious, and from the police occupational subculture, that is, a discourse comprising a language of understandings, beliefs and practices which is shared to varying extents by police officers (Waegel, 1984[a]).

A number of studies, particularly those conducted by Vrij and his colleagues in the Netherlands, have examined the scripted cues that police commonly use in assessing the potential threat posed by suspects of different races (e.g. Vrij, 1993; Vrij & Winkel, 1992). The following findings, while interesting, should be considered with caution because they are the product of a relatively small number of experimental studies. Nevertheless, it has been found that suspects' non-verbal behaviour provides the most important cues for officers' assessments of potential hazard and there are significant differences between the non-verbal behaviour of black and white people.<sup>42</sup> White police also tend to find black people's non-verbal behaviour suspicious (Vrij, 1993; Vrij & Winkel, 1992).<sup>43</sup> Together these findings have been used to hypothesise that a heightened suspicion of black people on the part of white officers may increase the likelihood of police intervention. This could explain the elevated arrest rate among black people: white officers' interpretations of the potential threat posed by black suspects may be inaccurate and this may prompt officers to use force when it is unnecessary, or to employ more force than required to resolve a given situation. As Scharf and Binder put it: "[a] violent expectation on the part of the officer produces a general aura of danger that motivates the opponent towards violence" (1983:78). Investigating the role played by racial stereotypes in police decision-making appears to be a valuable avenue for future research on racial discrimination in police use of force. When the supportive evidence on police racism is evaluated it suggests that there is racial discrimination in sectors of the North American police force. It does not, however, constitute sufficient academic proof of *systematic* racial discrimination in the use of force by police, particularly when alternate interpretations for racial patterns are taken into account (Geller & Scott, 1992).

Numerous scholars have argued that the disproportionate number of black people arrested and killed by police does not necessarily indicate racist police conduct (e.g. Alpert, 1989[b]; Matulia, 1985; Fyfe, 1981[a], 1978). Police may kill more black suspects because they more often threaten people. Under such circumstances the use of deadly force is not only legally justified but also an appropriate response (e.g. Blumberg, 1981; Fyfe, 1981[a], 1978; Milton *et al*, 1977; Harding & Fahey, 1973). Hence, police may be responding to the legally relevant factor of potential danger and not to the legally irrelevant factor of race. There is some evidence showing that the high rate of arrest among black people is due to a higher rate of offending, and that the higher number of black suspects killed by the police is attributable to a higher rate of violent offending by this group (e.g. Hindelang, 1978). It has been found that the percentage of black people arrested for violent offences closely mirrors the proportion who are shot by police (e.g. The St Louis Police Department, 1992; The Dallas Police Department, 1990; Alpert,

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42 And people of different cultures.

43 Also see Hansson (1992) re South Africa.

1989[b]; Blumberg, 1983; Fyfe, 1981[a]; Geller & Karales, 1981[a] & 1981[b]).

Overall the collective evidence in respect of the 'dangerousness hypothesis' is somewhat mixed. The only source of relevant national data available shows two particularly interesting racial differences: (1) a higher percentage of white suspects were killed by police because they attacked somebody; and (2) a higher proportion of black suspects were killed by police because they committed serious offences or fled from arrest (The FBI, 1989[ii]). These data seem to contradict the postulate that black suspects are killed by police more frequently than white suspects because they are more likely to engage in threatening behaviour. It could be argued that actively attacking someone poses a greater and more direct threat than perpetrating a crime or fleeing from police. If this is the case, then a higher proportion of black suspects have been killed by the police for engaging in ostensibly *less* threatening behaviour than white suspects! In view of the temporal specificity and the dubious reliability of the data from which this inference derives, however, more rigorous testing is required for a definitive conclusion (Geller & Scott, 1992). Nevertheless there is additional support for the premise. After the killing of non-dangerous, fleeing suspects by police in the USA was outlawed in 1985, the percentage of black people killed dropped significantly (e.g. Sparger & Giacomassi, 1992). The most likely interpretation here is that prior to legal reform the police killed a disproportionately higher number of non-dangerous black suspects.

A range of other findings relating to the differential dangerousness of black and white suspects has emerged from experimental studies and the secondary analysis of police deadly force reports. The examination of self reports by officers has shown that race is not a significant factor in decisions to shoot at suspects (e.g. Dwyer *et al*, 1990; Hayden, 1981). Instead the best predictors of police decisions to shoot are: suspects being armed, perceived as intending to harm, and perpetrating serious offences (Dwyer *et al*, 1990). Needless to say, results from this kind of research enable only the most tentative of extrapolations to be made to police behaviour in real-life situations and should be considered with added caution given the likely confounding effect of social desirability.

Numerous researchers have investigated police reports on shooting decisions in various cities.<sup>44</sup> A substantial amount of this work has supported the claim that a higher likelihood of threatening behaviour on the part of black suspects is *the* reason for police killing more black people. To illustrate, it has been shown that: more blacks killed by police have been armed, especially with firearms; have used or threatened to use a gun; or have perpetrated armed offences, particularly robbery (Fyfe, 1981[a]; Geller, 1989; Meyer, 1980[a] resp). Such findings have been used to conclude that there is no *systematic* racial discrimination in police shootings.

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44 See Blumberg (1983, 1981) on Atlanta and Kansas City, Geller (1989), Geller and Karales (1981[a]) on Chicago, Alpert and Fridell (1992), and Meyer (1980[a], 1980[b]) on Los Angeles, Fyfe (1982) on Memphis, The NYSCCJ (1987), Blumberg (1983, 1981) and Fyfe (1981[a]) on New York City.

Some scholars, however, maintain that this type of research has not negated the existence of racism, but has obscured racial discrimination by employing variables that conflate active resistance by suspects with indirect or potential threat. Stark (1990) for example, maintained that when active resistance by suspects was treated as a separate variable, black suspects were found to be no more likely than whites to engage in violent resistance against the police.

For over a decade the methodological inadequacy of the designs used to research police racism has been noted as a key impediment to the resolution of the issue (e.g. Blumberg, 1986; Geller, 1985[a]; Sherman 1980[b]). In response, researchers have recommended the examination of black and white suspects killed by police under *similar* circumstances (e.g. Blumberg, 1981). If it could be demonstrated that police use deadly force against black suspects more often than they do against whites under the same circumstances, this would constitute robust evidence of racial discrimination. Results from studies incorporating this design, conducted in New York City, Kansas City and Atlanta, have contradicted the police racism hypothesis (NYSCC, 1987; Blumberg, 1981 resp). It has also been suggested that samples include incidents in which officers have fired shots and those in which they have chosen *not* to shoot although legally justified (e.g. Geller, 1985[a]). The reasoning here is that police racial discrimination would be evident if it could be shown that police choose *not* to shoot significantly more white suspects. It is not surprising, given the limited availability of data on *averted* deadly force incidents, that there have been few studies of this nature. The work of Fridell and Binder is an exception (1989, 1988). These researchers used aggregated data for four North American cities and compared the relative proportions of black and white suspects involved in averted and actual police shootings.<sup>45</sup> Although their results did *not* support racial bias in police decisions to shoot or to refrain from shooting, the authors acknowledged that the use of aggregated data could have masked significant trends in individual cities. More research of this nature has been called for and may well be forthcoming now that some police agencies have begun to routinely collect data on averted force. Indeed investigating averted force from the angle of restraint employed by officers is likely to enlighten our understanding of the police racism issue, that is, by exploring the extent to which police employ less-than-lethal means in relation to suspects of different races in similar potentially violent situations.

Whilst the bulk of the available findings have not supported the existence of systematic police racism, a few results have demonstrated that in certain circumstances police use of deadly force may be racially discriminatory. For instance: studies of the Los Angeles and Memphis police have shown that prior to 1985 a higher proportion of unarmed suspects shot by police while fleeing from arrest were black (Alpert & Fridell, 1992; Fyfe, 1982; Meyer, 1980[a]). Similarly, a higher percentage of black suspects were shot by police in the erroneous belief that

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45 Originally collected by Binder *et al* (1982).

they were reaching for concealed weapons. This could be the product of racist stereotypes that lead officers to believe that black suspects are more dangerous than whites. It could also result from police attempting to cover-up less acceptable motivations for shooting. Either way, both of these findings suggest some level of racial discrimination by police that requires further exploration.

Although it may seem trite to note that it is not just the race of victims that is relevant in assessing the issue of racial discrimination by police, but the race of police officers who use deadly force against suspects, many a study has considered only one side of this equation. Work on the race of officers who kill has established that:

"[w]ith hardly any exception, the only officers who shoot any appreciable number of white suspects are white officers. This has been true from city to city and nationally over the past three decades" (Geller & Scott, 1992:159).<sup>46</sup>

This means that black police seldom kill white suspects whereas white officers kill both black and white suspects. This pattern is in keeping with the hypothesis of racial discrimination by police, but there is a persuasive alternate explanation that contradicts this postulate. It is feasible that black officers kill more black suspects because they are more often deployed to, and live in, black residential areas that are characterised by high rates of violence (e.g. Fyfe, 1981[a]; 1981[d]; 1979[a]; 1978). This reasoning marries well with the findings that black officers are more likely to shoot and to be killed than white officers (e.g. Geller & Karales, 1981[a], 1981[b]; Fyfe, 1979[a], 1978; Nowicki & Stahl, 1978; Kohler, 1975[b]; The FBI, 1991[i], 1989[i]; Konstantin, 1984; Geller & Karales, 1982, 1981[a]; Fyfe, 1979[a] resp). Such paradoxical interpretations underscore the necessity of detailed contextual information in ascertaining the meaning of racial disproportions in police homicides and deadly force usage (e.g. Alpert, 1989[b]).

It is now widely accepted that much of the research on police racism has been overly simplistic because too often the behaviour of officers and civilians has been treated as somewhat discrete and static phenomena. The importance of investigating the *dynamics* of interactions between police and civilians has now been recognised not only in relation to work on racism but also for research into police conduct in general (e.g. Binder *et al*, 1982). Most notably, it has been shown that an officer's behaviour early in an encounter with a civilian is a critical factor determining the likelihood of subsequent violence (Fridell & Binder, 1992; Binder *et al*, 1982). It has also been found that, under experimental conditions when either party to an inter-racial interaction displays aggressive behaviour, the probability of the encounter escalating into violence is increased significantly (The Chicago Tribune, 13 May

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46 See Behm (1992), The KCPD (1991), The Dallas Police Department (1992, 1990), The FBI (1991[i]), Bratton (1990), Sherman and Cohn (1986), Geller and Karales (1981[a], 1981[b]), Meyer (1980[a]), and Fyfe (1978).

1992). Considering these and other findings on racist stereotyping in police decision-making it is feasible that white officers' initial responses to black suspects may be unnecessarily aggressive because they perceive black people to be potentially dangerous. Such behaviour is likely to antagonise black suspects making them more inclined to actively resist the police. If this is the case, the probability of violent confrontation in interactions between white police and black suspects would be increased. Whilst speculation at this stage, the further exploration of such racial dynamics between police and civilians would seem worthwhile.

After critically reviewing the accumulated literature on this topic, eminent experts in the field have concluded that:

"... most studies have failed to find evidence that police officers *systematically* discriminate against minorities in their decisions to use deadly force. ... In general, the existing research on deadly force seems to indicate that police officers typically respond more to race-neutral indicators of danger (such as whether the opponent is armed, has used or threatened to use a weapon, the type of crime reportedly committed, etc.) than to such inappropriate considerations as the opponents race" (Geller & Scott, 1992:200 & 208).

But it has been acknowledged that the question of police racism has *not* been adequately investigated and that the available findings do not enable the resolution of the issue (Geller & Scott, 1992). Many scholars contend that simply because research has failed to demonstrate racially discriminatory practices by police does not *disprove* the existence of police racism. In fact, it may be "methodologically impossible" to verify racial discrimination separately from legally relevant factors because "... 'legally relevant' variables [which would justify different treatment of different persons] are themselves connected to race" (Reiner, 1992:479). The controversy over police racism thus rages on and remains one of the key issues in contemporary policing in most developed countries today.

### ***Characteristics of Police who Kill***

The capacity to reliably predict a propensity to violence would be an invaluable aid to police recruitment and deployment decisions. Although many researchers have investigated whether there are characteristics distinguishing officers who are more prone to using force, the findings have been inconclusive. Over the years those who have critically evaluated the research have consistently concluded that *no* dependable predictors of violent behaviour among police have been identified (e.g. Toch, 1993; Fyfe, 1989[c]; Blumberg, 1986; Friedrich, 1980; Sherman, 1980[b]). In fact it has been noted more generally that "... there is virtually no empirical support for assertions that individual officer characteristics are measurably related to any type of performance in office" (Fyfe, 1989[c]:478). This also seems to be the position in the broader field of the prediction of violent behaviour and dangerousness. Perhaps the only factor that has been shown to predict the likelihood of future violent

behaviour, at least to some degree, is *previous* violent behaviour (The Independent Commission on the LAPD, 1991). This underscores the importance of systematically monitoring the conduct of individual police officers over their entire careers; an intervention which is being adopted increasingly by North American police agencies today. It is hoped that this new source of information will enable the more successful prediction of the use of force by police, for it has been pointed out that:

"... insufficient research exists to lay to rest some of the intuitively plausible relationships between officer characteristics and the outcomes of potentially lethal confrontations between police and adversaries" (Geller & Scott, 1992:157).

Despite the current inability to predict with confidence precisely who will be likely to use force unnecessarily, many studies have identified variables that are correlated with greater firearm use. As already noted, there seems to be a higher rate of shooting by black police (e.g. Geller & Karales, 1981[a], 1981[b]; Fyfe, 1979[a], 1978; Nowicki & Stahl, 1978; Kobler, 1975[b]). Black officers have also been found to have poorer timing in drawing their guns than white police (Doerner, 1991).

Policing has traditionally been a male dominated occupation, not only in the USA but internationally. It has also been a long-standing practice for women in the force to be assigned to office-based positions (e.g. Martin, 1990). Until recently the sex of police was not a popular relevant variable. Over the past decade, however, the composition of police forces and deployment practices have begun to change under pressure for equal opportunities (The Bureau of Justice Statistics, 1992[a], 1992[b]). As more women officers have been assigned to patrol duty and to specialised squads, the number of female police killed in the line-of-duty has also begun to increase (The FBI, 1989[i]; Martin, 1990). Consequently, sex is rapidly becoming a significant factor in studies of the use of force by police (Alpert, 1989[b]; The Chicago Tribune, 5 April 1991). There is some evidence from Europe and the USA that female officers are less likely than male officers to fire shots (e.g. Kruize & Wijmer, 1991;<sup>47</sup> Doerner, 1991 resp.). More specifically, Doerner (1991) has shown that under simulated conditions female officers tended to draw their firearms too late and had poorer hit rates than their male colleagues. It is noteworthy that the impact of sex and gender on police decisions to use force seems to be the product of a complex interplay of various factors. A few studies have found that the sex of female officers' partners affects the likelihood of their shooting (e.g. Blumberg, 1989, 1983; Grennan, 1987). Female police partnered by male officers tended to fire shots less frequently than those who were paired with females (e.g. Goldstein, 1990). It would thus seem that, like race, gender ought to be

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47 For the Hague in the Netherlands.

interpreted as part of a complex and dynamic context.

Interestingly, there is some evidence indicating that restraint in the use of firearms by police is associated with increased work experience (Geller & Scott, 1992). For example, Doerner (1991) found that under simulated conditions officers with fewer years of service drew their guns too early, thus demonstrating a lack of restraint when compared to police who had greater experience. Similarly, Holzworth and Pipping (1985) have shown that under the same circumstances less experienced officers were more likely to fire shots than their more seasoned colleagues. It is crucial, however, not to lose sight of the critical issue: it is not *whether* restraint is employed that is of concern but whether the police use restraint when it is appropriate to do so and when it does not increase the danger posed to themselves or others.

As might be expected, most of the police who kill civilians do so while on duty (Geller & Scott, 1992). Nevertheless, of late there has been growing concern about the use of deadly force by off-duty officers. It seems that arming and obliging officers to engage in law enforcement activities when off duty is a police tradition in North America (The Law Enforcement News, 15 April 1992; Matulia, 1985; 1982, Hophy, 1978).<sup>48</sup> For some time this practice has been criticised on a number of grounds: requiring police to carry their guns outside of working hours is likely to increase the chance of weapons being lost or stolen, and it may boost the probability of firearm suicides, accidents and heat-of-the-moment shootings by officers (Geller & Karales, 1981[a]; Fyfe, 1978). Furthermore, obliging police to function as law enforcement officials even when off duty has been widely rejected as unfair and dangerous (e.g. Fyfe, 1980[b]). It has been argued that off-duty police operate at a disadvantage tactically and in terms of legitimacy; being more likely to encounter resistance from civilians (e.g. Fyfe, 1980[b]; Reiss, 1971[a]). They must also function without the benefit of background information, equipment or backup which are generally available when police are on duty (e.g. Rutledge, 1988). Additionally, off-duty officers are generally not uniformed which means that they run the added risk that civilians and on-duty police officers may mistake their identities. Finally, obliging off-duty police to intervene means that they have no respite from work-related stress. This must eventually impact negatively on work performance and personal well-being. In view of the serious disadvantages of this practice it has been proposed that a standard policy of disarming off-duty police and removing their obligation to intervene be uniformly adopted by US police (Geller & Scott, 1992). It has been suggested further that officers be specifically trained *not* to intervene when off duty, but rather to observe and contact the police as soon as possible (The Law Enforcement News, 15 April 1992).

Most police who kill civilians are uniformed rather than plainclothes officers (The FBI, 1991[i], 1989[i]). This simple finding is, however, difficult to interpret

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48 Although not uniformly practised.



as the ratio of uniformed to plain clothes police in the USA is not available. Similarly, little can be concluded from the fact that the majority of police shootings are perpetrated by officers on patrol. This is due to the lack of accurate background information on the proportions of officers who have been assigned to different types of duties at any particular time (e.g. Geller & Karales, 1981[a]; The California Department of Justice, 1974). Once again this underscores the importance of contextual data for meaningful interpretation. Nevertheless, it is generally accepted in this field that the bulk of shootings by North American police have been perpetrated by uniformed, white, male officers while on patrol duty, using their service handguns to fire more than one shot (Geller & Scott, 1992). It can be safely said that many aspects of police practice ought to be considered as potentially relevant to the use of deadly force, including for example: whether officers are uniformed, the nature of police assignments, whether officers work alone, whether they are assisted by police backup, and the length and quality of the relationship between police partners (e.g. Geller & Scott, 1992; Wilson *et al*, 1990).

### ***Situations in which Police Kill Civilians***

A range of situational factors have been studied with the aim of identifying the types of circumstances in which police are likely to kill civilians. It is now well known that most police shootings occur in conditions of poor visibility,<sup>49</sup> outdoors in public locations,<sup>50</sup> in high crime areas, after the police have been called to respond to a suspected armed robbery or a report of "a man with a gun" (Geller & Scott, 1992:143). Here again it is not wise to draw firm conclusions from this primary data without background information with respect to the relative deployment of officers to different situations.

Public visibility and the related issue of accountability are among the more interesting factors to have emerged from this kind of work. Although the research findings are anything but conclusive, there is some indication that the presence of civilian witnesses decreases the likelihood of police employing deadly force (e.g. Friedrich, 1980). At least two studies have shown that only a small minority of police shootings are observed by third parties despite the fact that the majority occur outdoors in public areas (e.g. Fyfe, 1981[b]; Nowicki & Stahl, 1978).<sup>51</sup> This is by no means an established finding, however, as other investigations have produced contradictory results, namely, that there is at least one civilian witness to most police shootings, and that the presence of bystanders does not significantly affect police decisions to shoot (The NYSCCJ, 1987; Holzworth & Pipping, 1985 resp). Nevertheless, there is face validity to the hypothesis that increasing public visibility

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49 Also see Cerar (1991) and Kruize & Wijmer (1991).

50 See Binder *et al* (1982), Geller and Karales (1981[a]), Fyfe (1981[a]) and Kohler (1975[b]).

51 See Cerar (1990), The NYPD (1988), The NYSCCJ (1987), Geller and Karales (1981[a]), and Robin (1963).

and accountability for police conduct may reduce the use of deadly force. At least some police agencies in the USA seem to be taking this issue seriously, particularly since the Rodney King incident in which a bystander videotaped the police beating a civilian. US police managers have subsequently begun introducing car-mounted video cameras and wireless microphones for officers, although this is arguably as much to protect the police as civilians.<sup>52</sup>

Findings from investigations of situational *dynamics* have been much more promising. The first variable of this type to be studied has been the immediate precipitant: the factor which actually prompts an officer to use deadly force. Recently published data for the USA shows that the majority of officers killed civilians who attacked others (see Table 4.3).<sup>53</sup>

**Table 4.3:**  
**Precipitants of Police Justifiable Homicides in the USA, 1989.**

Reasons	Frequencies	Percentages
Attacked someone	193	59
Committed offence	81	25
Resisted arrest	35	11
Fled	16	5

Source: The FBI (1989[ii]).

Precipitants have usually been framed in terms of the conditions under which the US police are lawfully permitted to kill. The legal change that was made to the legislation in the mid-eighties must therefore be taken into account when interpreting research findings pertaining to the period before and after this reform. In 1985 the US Supreme Court ruled that it would no longer be lawful for police to kill non-violent suspects who were fleeing to avoid arrest (Tennessee v Garner, 1985). Thus, while figures for fleeing suspects killed before 1985 refer both to violent and non-dangerous suspects, data for the post-1985 years should pertain only to violent suspects who were fleeing from police arrest.

Research conducted in Canada and in the USA (before 1985) has demonstrated substantial *spatial* variations in police justifiable homicides involving non-dangerous fleeing suspects: 49% of those killed by the Boston police; 43% by police in seven North American cities; 38% by the British Columbia police and none by the Toronto

52 Video-cameras have also been introduced to monitor the treatment of suspects at many police stations in the USA and Britain.  
53 Also supported by Geller and Scott (1992), Cerar, (1990), Horvath (1987), The NYSCCJ (1987), Horvath and Donahue (1982) and Geller and Karales (1982, 1981[a], 1981[b]).

police (e.g. The Boston Police Department, 1974; Milton *et al*, 1977; Chappell & Graham, 1985; Abraham, 1981 resp).<sup>54</sup> In the mid-eighties it was concluded that a significant proportion of those who were fatally shot by Canadian and North American police were not dangerous, that is, they presented no imminent threat to life or limb (e.g. Chappell & Graham, 1985; Geller & Karales, 1981[a], 1981[b]; Meyer, 1980[a]; Milton *et al*, 1977; The Public Interest Law Center of Philadelphia, 1975). It is most noteworthy that despite the legislative change in the USA, the national annual percentage of fleeing suspects killed by police remained relatively constant throughout the eighties, at about six per cent p.a. (Geller & Scott, 1992:192).

In essence the 1985 US reform limited police use of deadly force to the prevention of death and injury. A range of researchers thus developed typologies to classify the kinds of hazards that prompt police to employ deadly force (e.g. The FBI, 1990[i]; Burke *et al*, 1988; Fyfe, 1981[c]; Geller & Karales, 1981[a]; Meyer, 1980[a], 1980[b]). Until the early eighties it was widely accepted that an officer's decision to use deadly force was a split-second response to a sudden threat and hence not alterable (Geller & Scott, 1992). Over the last 15 years, however, a conceptual breakthrough has been made which has re-oriented thinking in the entire field and has opened the way for a wide range of interventions. The basic assumption of this *transactional* approach is that, contrary to conventional wisdom, the final decision to use force is the outcome of earlier decisions. The pioneering models of police decision-making in the use of deadly force formulated mainly by Reiss (1980) and, Scharf and Binder (1983) have shaped developments in this sphere.

Reiss applied the basic postulates of sequential decision-making theory to an analysis of police decisions to use deadly force (1980). In sum, he maintained that this decision was contingent on a number of prior choices. In other words, important social judgements involve a sequence of decisions, each choice determining subsequent options. Good final decisions require that a decision-maker be aware of the range of options available to her/him at each stage and that s/he has the opportunity to choose from these alternatives. Bayley used Reiss's work to develop a three-phase model of the stages characterising police-civilian interactions - contact, processing and exit -- and explored the tactical choices made in threatening situations (1986). Later Bayley and Garofalo (1989) extended this analysis by comparing officers judged to be skilled at diffusing potentially violent interactions with civilians, and those considered to be of average ability. They found, *inter alia*, that police were relatively accurate judges of their colleagues' skill at handling conflict (Bayley & Garofalo, 1989).

Like Reiss (1980), Scharf and Binder (1983) also adopted the notion of a sequence of decisions. However, they developed a more detailed model of potentially violent police-civilian encounters by drawing on symbolic interactionism

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54 Also see Fyfe (1981[c]), Milton *et al* (1977) and Robin (1963).

and work in the field of the psychology of social judgements.<sup>55</sup> They argued that any encounter between police and civilians has the potential to escalate into violence, and that successive decisions and behaviours by both parties determine the likelihood that force will be used. From the time an officer is called, or takes the initiative to engage in an interaction with civilians, s/he is faced with a series of decision opportunities and his/her choices significantly affect whether force will be needed. These authors also accepted the notion that individuals, especially those in differing social roles, do not necessarily interpret social reality in the same way. Therefore police and civilians are likely to respond to disparate cues as indicative of potential threat. When studying the likelihood of violence it is thus vital to take account of the way in which participants' perceptions shape interactions and the factors each party perceives as restricting or enhancing their options. After all, the consequences of an officer misjudging the threat posed by a suspect are unnecessary death or injury.

Significantly, it has been shown that North American police do not always use deadly force even when they are legally justified in doing so, and two key concepts - averted force and less-than-lethal force -- have been linked to this finding (e.g. Scharf & Binder, 1983). While the notion of less-than-lethal force is self explanatory, averted deadly force refers to:

"situations with the potential to escalate into the use of deadly force by police but that, through officer skill or other circumstances, are resolved without the officer(s) firing a weapon [using deadly force]" (Geller & Scott, 1992:146).

These conceptual developments have boosted progress in research and policy in this field. Today operational work on techniques for averting the use of deadly force is one of the most rapidly developing and productive areas of research (e.g. Fyfe, 1988[b], 1986[b]).

Scharf and Binder (1983), among others, have stressed that in any encounter between police and civilians there are a range of force options available, and also a number of outcomes associated with employing each of these: an officer may choose to use no force at all, s/he may use only less-than-lethal forms of force, or s/he may use deadly force. Of course, various force options may be employed at different times during an interaction which means that the sequence and combination of force options may vary across situations. The United Nations now promotes the incremental use of force by police. According to this principle, whenever feasible, police should refrain from using force; only if this proves unsuccessful should less-than-lethal forms of force be employed, and deadly force should only be used if less-than-lethal options fail. When force is used there are a number of possible outcomes ranging from no injury, to some injury, to death. Hence, in order to understand the

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55 Also see Geller (1982[b]) and Hayden (1981) on the psychology of police decisions.

factors that affect whether police use force and the type of force, it is imperative to examine interactions between police and civilians in which the *full range* of force options and outcomes are represented. All types of contacts between police and civilians ought to be analysed and not only those resulting in particular outcomes or those involving the use of certain kinds of force.

Scharf and Binder's model comprises five phases: anticipation, initial confrontation, information exchange, final frame decision, and aftermath. These have been described as regularly occurring periods in certain types of social events which also signify choice points at which activity may continue or be terminated (1983).<sup>56</sup> The first phase, anticipation, begins with a *mobilising event* like the police being dispatched to an incident or spontaneously initiating an interaction. The information officers have about a forthcoming encounter is the critical factor during this stage as it shapes their preconceptions about the interaction.<sup>57</sup> Early decisions made in this stage affect officers' initial conduct during an interaction and this restricts or expands their subsequent options. Furthermore, the probability of deadly force being used by and against officers is increased when police intervene in ambiguous situations (Fridell & Binder, 1992). Spontaneous interventions tend to be characterised by greater uncertainty because officers do not have the benefit of the information which is made available when they are dispatched. However, incidents to which officers are dispatched may turn out to be just as confusing, as civilians who call for police assistance often exaggerate their predicaments either as a result of panic or to ensure that their call receives priority attention. Thus, providing officers with accurate and comprehensive information *before* they even enter a situation is critically important in reducing the likelihood of violence in police-civilian encounters (e.g. Fridell & Binder, 1992; Scharf & Binder, 1983).

Once an officer reaches the scene the second phase of *entry and initial contact* commences. Officers should seek, as quickly as possible, to adopt and maintain a safe yet strategic position. Two other critical factors have been identified during this stage: (1) an officer's ability to use the data s/he acquires from the actual situation to rectify and enhance his/her preconceptions; and (2) his/her skill at expanding the options for dealing with the incident, whilst limiting those available to potential opponents.

The third phase involves the *exchange of information* between police and civilians. Information may be exchanged via verbal and/or non-verbal communication. It has been found that the most effective police communications are those which establish authority and law enforcement status, and inform civilians in an unambiguous and assertive manner of police intentions and required behaviour. For example, identification as police, oral warning of intentions to shoot, to arrest,

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56 Initially there were four phases, the fifth was added subsequently, see Binder *et al* (1982) and Scharf and Binder (1983) resp.

57 Especially alternate means of dealing with the situation.

orders to stop, to lay on the ground and to raise the hands. Skill at reliably interpreting non-verbal cues or body language has been found to aid officers in rapidly assessing how civilians are responding to a particular approach (Scharf & Binder, 1983).

Phase four is the *final frame decision*, that is, whether or not to use deadly force. Of course, not every interaction between police and civilians requires officers to confront this dilemma. If police manage to handle the previous three stages successfully, an incident is likely to be resolved without escalating into violence. Nevertheless, no matter how skilled police officers may be, there will be circumstances in which they will be legally justified, and in some instances obliged, to use deadly force against those who constitute a significant threat. There is a growing tendency within contemporary North American police agencies to reduce the use of deadly force by officers, even in situations where it is lawful for the police to kill.

The fifth stage, the *aftermath*, was long overlooked. It comprises the events that follow an encounter between police and civilians and depends on the nature and outcome of the interaction concerned. For instance, if a suspect has been killed by police, the aftermath will include the investigation and assessment of the officer's conduct which may or may not result in sanctions of various kinds and sometimes in changes to police policy. Importantly, there is the loss to loved-ones, the impact of killing on the perpetrator and the cost to society of losing a citizen. In some cases there may be wider negative ramifications like diminished public trust and anger at the police which may erupt as community protests, riots and/or attacks on police officers. Whilst there are many negative consequences of the use of deadly force by police, usually little attention is paid to incidents in which officers manage to avert the use of deadly force. According to a long serving officer:

"[n]o one knows about the hundreds of instances when a policeman [sic] decides not to shoot. Perhaps no one cares. After all, people say, we're trained to handle such things, as if training somehow removes or dilutes our humanity" (Anonymous in: Scharf & Binder, 1983:97).

If restraint in the police use of force is to be reinforced, then officers who exhibit such behaviour must be rewarded and the public must be made aware of such commendable efforts. Furthermore, incidents in which force is successfully averted ought to be used to inform the development of police policy, training and practice. Scharf and Binder's (1983) model has proved to be particularly useful in hypothesising factors that are likely to contribute to the probability of deadly force (see Table 4.4).

**Table 4.4:**  
**Selected Characteristics of High Risk Police-Civilian Encounters.**

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- \* Officers inaccurately assess the level and/or source of hazard.
  - \* Officers believe that they have little control because there are few options for dealing with the situation.
  - \* There is little time for officers to evaluate options and plan responses.
  - \* Suspects use deadly force to escape from arrest after perpetrating serious offences.
  - \* Suspects are highly unpredictable like youths and the mentally ill.
  - \* Suspects are stereotyped as being dangerous like young, black males.
  - \* Officers are not prepared for engagement such as when off duty and when intervening spontaneously.
  - \* A single, unassisted officer is confronted by an armed suspect.
  - \* More than one officer is present and someone fires a shot.
  - \* There is poor visibility which impedes the accurate assessment of hazard.
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*Source:* Scharf and Binder (1983:68-90).

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To date, empirical research based on averted force incidents has been limited by the scarcity of relevant data and the difficulties inherent in forming representative samples. Nevertheless, an ex-post-facto study on this topic has been conducted by Fridell and Binder (1992) which has provided support for a number of Scharf and Binder's (1983) hypotheses. Most notably, the investigation showed that officers who averted shootings were no less likely to have been attacked by suspects than those who fired shots. Indeed the nature and level of violence with which officers were confronted did *not* significantly affect the probability that they would shoot. However, police were found to be more likely to shoot in surprise situations and in unpredictable and ambiguous circumstances. By contrast, shootings were more frequently averted when suspects were known to the police. Officers reported that this helped them to anticipate the risk of violence before entering a situation. Another difference that emerged was that officers who fired shots tended to formulate *fixed* strategies at an early stage of an interaction. The information exchange phase of an encounter was found to be particularly critical in determining whether police fired shots. In circumstances in which deadly force was averted, officers more often engaged in *dialogue* with suspects which seemed to calm and increase their compliance with police requests.

Some researchers have adopted a different angle by applying script theory to investigate the sequence of police decisions in potentially violent interactions. For instance, Dwyer *et al* (1990) explored officers' initial predictions about

dangerousness.<sup>58</sup> Such laboratory studies have provided support for the notion that it is the intentions officers *attribute* to suspects that determine their assessments of hazard and subsequent decisions to use deadly force. It has thus been postulated that improving the accuracy of police attributions may provide an effective means of reducing the unnecessary use of deadly force by police. To this end it has been suggested that future studies compare the types of police attributions made by officers and suspects in situations in which force is used and in those where it is averted.

Overall, the transactional sequential decision-making approach has served to expand the frame in which the use of force by police is investigated, most importantly by broadening the focus of research from: (1) incidents in which police use deadly force to police-civilian interactions in general; (2) a single outcome to the range of potential outcomes; (3) the police to all parties involved in police-civilian interactions; (4) the final decision to employ deadly force to the entire sequence of decisions that characterise encounters between police and civilians; (5) actual conduct to the perceptions and social judgements that motivate behaviour; and (6) a static outcome to the dynamics of social interactions.<sup>59</sup> Significantly, the focus on police-civilian encounters instead of police killings facilitates a more realistic assessment of the extent to which officers actually use force during police-work. Research samples that comprise only the most extreme scenarios in which police employ deadly force and actually kill, can produce a biased picture (Fridell, 1989). Analysing the police use of force within the context of all interactions between police and civilians is an approach that enables a more objective evaluation of the politically loaded question of whether police use of force is problematic and, if so, which specific aspects require intervention. After all, the critical question is not whether police use force or even how frequently they employ force, but the extent to which they use force when this could be *avoided*. It has been argued convincingly that the best way of identifying factors that are instrumental in reducing the unnecessary use of force is to study situations in which it has been averted and to compare such circumstances with those in which various types of force have been used.

The notions of elective versus non-elective shootings are useful heuristic devices for investigating averted shootings. Situations in which police have fired shots when they could have refrained from shooting without jeopardising anyone's immediate safety have been defined as *elective* shootings (Fyfe, 1981[c]). By contrast, incidents in which shooting has been the only feasible way of ending an imminent threat to life have been classified as *non-elective* shootings (Fyfe, 1981[c]). Although these theoretical constructs are useful for evaluating the necessity of police shootings after the fact, to be valid and fair, post hoc assessments

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58 And cognitive strategies officers' use to assess whether deadly force is legally justified.

59 Derived from the interactional approach, see Gelles (1982) and Luckenbill (1977).



of police decisions to use deadly force ought to be based on the information that was available to an officer at the time s/he made such a decision. In other words, police decisions to use deadly force must be judged in terms of their reasonableness rather than their correctness (Geller & Scott, 1992; Scharf & Binder, 1983).

This kind of analysis has highlighted the need to identify the hazards associated with different types of police-civilian encounters (Scharf & Binder, 1983). In order to reliably calculate the relative risks posed by each kind of situation, a range of detailed data must be taken into account including inter alia: the number of calls for police service, spontaneous interventions by officers, incidents involving suspects who engage in armed conflict, incidents in which deadly force is used by police and/or civilians, and resulting non-injuries, injuries and deaths. However, such baseline figures have been scarce.

### ***Characteristics of Police who are Killed***<sup>60</sup>

It seems that black police are more likely than white to be killed; a pattern that has been attributed to the fact that more black officers are assigned to and live in dangerous areas. The vast majority of officers who have been killed in the line-of-duty have been male (e.g. The FBI, 1991[i], 1989[i]; Cerar, 1990; Geller & Karales, 1981[a]). While this is to expected because men have traditionally constituted the bulk of most police forces, there is some evidence to suggest that the rate of death for male officers is higher than for female officers. To illustrate: although females comprised nine per cent of the police force in 1989, they accounted for only three per cent of police deaths (The FBI, 1989[i]; Martin, 1990 resp). At this stage meaningful conclusions about the effects of officers' sex on their vulnerability to injury and death are not feasible, as background data regarding the proportional deployment of male and female officers to potentially dangerous situations has not been available.

North American police officers in the age-group 31 to 40, and more experienced officers with nine to ten years service have been most likely to be killed by civilians (The FBI, 1991[i], 1989[i]). Although most police have been killed while on duty, of late there have been a sizable number of homicides among off-duty officers, e.g. in 1990 23% of police were killed when off duty (Geller & Scott, 1992; The FBI, 1991[i]). As yet the reasons for this relatively high rate of homicide among off-duty police have not been ascertained. However, police policy requiring officers to carry their service firearms and intervene in suspected offences when *off duty* have been investigated as likely contributory factors. Furthermore, variables such as the wearing of uniforms, the type of assignment and whether officers work alone, are partnered or assisted by backup units, have all been considered in the quest to identify factors that may heighten the risk of officers being killed or injured. Unfortunately, it has not been possible to accurately interpret the findings from this

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60 Relevant information on PSOs was scarce.

work in the absence of background data on the proportions of officers involved in different scenarios (Geller & Scott, 1992).

### ***Characteristics of Civilians who Kill Police***

Police tend to be killed by men; most commonly younger white males between 18 and 29 (The FBI, 1991[i]; 1989[i]). Although it is widely believed that there has been an upsurge in violent crime among youths in the USA over the last 20 years, this appears to be something of an urban myth. Certainly the proportion of youths who kill officers has not changed significantly. But there is some indication that the offences committed by young people today have become more violent, especially those that are drug/gang-related (The New York Times, 13 September 1992). This is one of the reasons why urban street gangs have been targeted for intensive intervention by most big-city police agencies in contemporary North America (The St Louis Post-Dispatch, 6 August 1992).

It has also been found consistently that civilians who kill police tend to have previous experience of the criminal justice system. For instance, national data for the last decade show that the vast majority of civilians who perpetrated police homicides had prior arrests and convictions, particularly for crimes of violence and weapons violations (The FBI, 1991[i]).<sup>61</sup> Those who kill officers face a very high chance of being arrested, prosecuted and convicted for their offences. To illustrate: between 1979 and 1988 83% of the alleged perpetrators of police homicides were arrested and charged, 85% of these accused were convicted; 72% for murder (The FBI, 1991[i]:22). This pattern stands in stark contrast to the characteristically low rates of prosecution and conviction for police officers who kill.

### ***Situations in which Police are Killed***

More studies have been conducted with the aim of identifying the types of encounters in which civilians are likely to endanger police than vice versa.<sup>62</sup> Notably, this work has not yet established the *relative* risks of different types of civilian-police encounters.<sup>63</sup> However, a range of figures has been produced pertaining to the use of force against the police generally, including fatal and non-fatal assaults, shootings, as well as the use of other types of force by civilians against officers.<sup>64</sup> Over 90% of police killed by civilians have died from gunshots (Behm, 1992; The FBI 1991[i]). Although the rate of armed assaults on US police has

61 See Geller and Scott (1992:181) for FBI figures.

62 See: the annual reports of the FBI on officers who are killed and assaulted nationally particularly since 1972, Geller and Scott (1992), Garner and Clemmer (1986), Vaughn and Kappeler (1986), Little (1984), Moorman and Wemmer (1983), Geller and Karales (1981[a], 1981[b]), Meyer *et al* (1979, 1978), Fyfe (1978), Lester (1978[a], 1978[b]), Kieselhorst (1974), Morrison and Meyer (1974), Regens *et al* (1974), Cardarelli (1968), Cramer and Robin (1968) and Chapman (1964).

63 Taking into account the frequency of police involvement in different situations.

64 See Geller and Scott (1992:231) for a summary of findings.

remained relatively constant, the rate of police homicides has been declining since the late seventies (Geller & Scott, 1992). The improved survival rate among officers has been attributed largely to the routine wearing of protective SBA. Thus, understanding rates of police death and injury requires taking into account levels of assaults on police and the extent to which officers take safety precautions. It seems that engagements initiated by officers pose the greatest dangers for police, and that officers are most commonly killed during arrests (Konstantin, 1984, Table 4.5 resp). Notably, empirical findings have contradicted the popular belief that so-called domestic disturbances are particularly hazardous situations for police (e.g. Margarita, 1980[b]; Bard, 1977; Muir, 1977; Stephens, 1977; Vandall, 1976, Auten, 1972). It has been demonstrated that the danger to police associated with investigating 'domestic disputes' has been overestimated. In fact, officers face greater risk dealing with robberies (e.g. The FBI, 1989[i]; Garner & Clemmer, 1986; Swanton, 1985; Konstantin, 1984; Geller & Karales, 1981[a]; Margarita, 1980[a]; Fyfe, 1978). Indeed police are significantly *less* likely to be assaulted when responding to 'domestic' than other types of disputes (Stanford & Mowry, 1990).

**Table 4.5:**

**Percentages of Police Killed and Assaulted in Different Circumstances in the USA, 1986-1990.** <sup>65</sup>

Circumstances	Killed (%)	Assaulted (%)
Arrest situations	40	27
Disturbance calls	16	36
Suspicious circumstances	16	10
Traffic pursuits/ stops	11	11
Ambush situations	9	1
Prisoners	6	13
Mentally ill	2	2
Civil disorders	0	1

*Source:* The FBI (1991[i]).

While the mobilising events and the kinds of circumstances in which officers have been killed and assaulted have been studied consistently, the reasons civilians use deadly force against police have been relatively neglected. One of the few investigations of this topic -- which comprised the analysis of the NYPD's records between 1844 and 1978, some 134 years -- revealed that the main reason civilians killed police was to avoid arrest (Margarita, 1980[a]). Planned assassinations or revenge killings of police and attacks by mentally ill suspects were rare.<sup>66</sup> It has

<sup>65</sup> Percentages have been rounded.

<sup>66</sup> Also see Gates and Shah (1992).

been concluded more generally that:

"... the research findings from various studies over the past several decades suggest that both police officers and civilians shoot each other more because they feel they must than because they want to" (Geller & Scott, 1992:224).

Police officers are not only vulnerable to being killed by civilians, they are prone to suicide and accidental death. It is alarming to note that in recent times US police have been more likely to die by their own hand or to be killed accidentally by a colleague than to be killed by a suspect (e.g. Cerar, 1991; The NYPD, 1989, 1988; Geller, 1988; Geller & Karales, 1982, 1981[h]; Fyfe, 1978). In the early nineties suicide was the most significant cause of non-natural death among US police: 45% suicides, 30% intentional homicides and 26% accidents between 1990 and 1991.<sup>67</sup> For this reason a substantial amount of research has been conducted on suicides among North American police (e.g. David, 1991; Rutledge, 1988; Volanti *et al*, 1986; Kroes, 1985, 1976; Russo *et al*, 1983; Volanti, 1983; Wagner & Brzeczek, 1983; Bedian, 1982; Lester & Gallagher, 1980). It has been consistently concluded that the high risk of suicide is a product of the intense stress inherent to police-work. For some time it has been claimed that the suicide rate among police officers has been significantly higher than the civilian rate. An examination of the national statistics for the USA, however, reveals that this notion is rather shaky. Studies have failed to compare civilians and police officers of equivalent ages; a particularly significant factor in suicide. To illustrate: while the national police suicide rate of 17 per 100000 was higher than the suicide rate of 13 for civilians of all ages, it was lower than the suicide rate of 20 for males between 18 and 34 (Geller & Scott, 1992:234). So it is not certain whether the rate of suicide among police is significantly higher or lower than that of comparably aged civilians in the USA. Nevertheless, actuarial experts tend to agree that relative to other occupations, public law enforcement is characterised by one of the top five suicide rates (The Chicago Free Weekly, 22 November 1991; Kroes, 1985; Terry, 1985). Whatever the actual levels of police suicide, this issue is now generally treated by police managers as a matter requiring serious attention, and a range of preventative measures aimed at alleviating work-related stress and identifying officers at risk have been implemented in police agencies across North America. Particular attention has been directed at investigating the psychological effects on police of being involved in violent confrontations, both as perpetrators and victims (Geller & Scott, 1992). Post traumatic stress has been identified as one of the potential consequences and the impact on police conduct of this well documented syndrome is now widely recognised.

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67 Calculated using FBI data in Geller and Scott (1992).

The ratio of police who die accidentally compared to those killed intentionally has varied considerably over time and place (Geller & Scott, 1992).<sup>68</sup> Throughout the eighties concern over unintentional police deaths escalated as the proportion of officers killed accidentally kept rising. Notably, in 1984 and 1989 the proportion of accidental deaths exceeded intentional homicides (Garner & Clemmer, 1986; The FBI, 1989[i] resp). Police agencies subsequently took steps to reduce unacceptably high levels of accidental death, and figures for 1990 and 1991 showed a decrease in unintentional killings of US police (e.g. Fyfe, 1989[c]; Behm, 1992; The FBI, 1991[i] resp). Although guns have been responsible for a relatively small percentage of accidental deaths among officers,<sup>69</sup> specific interventions have been made to reduce the number of police-related unintentional firearm discharges, to lower the incidence of accidental shootings of plain clothes officers as a result of mistaken identity, and to limit the danger posed by stray or ricocheting bullets fired by police (e.g. The Crime Control Digest, 11 May 1992; The Law Enforcement News, 31 March 1992; Burke *et al*, 1988).

### ***Characteristics of the Broader Context***<sup>70</sup>

Empirical research has revealed that rates of police killings and deaths in the USA vary substantially across areas and over time (Geller & Scott, 1992). Despite the lack of comparability among many of the findings, the magnitude and consistency of the differences reported suggest that the variations are not spurious (Sherman & Cohn, 1986; Fyfe, 1981[b]). Hence, researchers have set out to explain why it is that at certain times some jurisdictions have been characterised by low rates and others by high rates of police deadly force usage. Whilst the importance of investigating *interactions* between police and civilians is now widely recognised, the broader context must also be taken into account if spatial and temporal variations in the use of deadly force are to be adequately explained.

There are two particular approaches in which the perspective has been expanded away from the micro-level of interactions between police and civilians to the meso-level of the community and the macro-level of society. The *community violence* model is based on the premise that police deadly force is a function of violence in the community at large, and more specifically, that police are more likely to resort to deadly force when they perceive an environment to be dangerous (e.g. Matulia, 1985; Sherman & Langworthy, 1979; Robins, 1963). It is part of the working knowledge of officers in every department that certain 'beats' are particularly dangerous. Wolfgang and Ferracuti's (1967) venerable notion of *subcultures of violence* has commonly been used to explain why certain areas are more dangerous than others. A subculture of violence is said to exist when a group

68 See Geller and Scott (1992:500-1) for national US figures from 1960 to 1991.

69 Only nine per cent in 1990, see The FBI (1991[i]).

70 See Geller and Scott (1992:25-29) on necessary contextual information.

of people adopt attitudes that condone and encourage the use of force as a preferred means of dealing with interpersonal and intergroup interactions (Wolfgang & Zahn, 1983; Wolfgang & Ferracuti, 1978).

Some authors have maintained further that actual police hazard *and* community violence ought to be considered (Matulia, 1985; Binder & Fridell, 1984; Fyfe, 1981[d]). Although levels of civilian violence in particular communities are likely to shape police perceptions of hazard, it is as important to take into account the extent to which violence is actually directed at police. This is particularly relevant considering that the level of non-elective police shootings in some areas may be as high as 75% (Binder & Fridell, 1984). There has been much debate over which indicators of community violence and police hazard ought to be used for research purposes. Nevertheless, the rate of civilian homicides, gun density, and the arrest rate for violent crimes, have been favoured as dependent variables.<sup>71</sup>

A variety of early studies demonstrated a significant positive correlation between rates of civilian homicide and police justifiable homicide (e.g. Lester, 1993; Langworthy, 1986; Fyfe, 1980[b]; Jacobs & Britt, 1979; Sherman & Langworthy, 1979; Kania & Mackey, 1977). The most popular conclusion reached from such findings was that officers are more likely to use deadly force in areas they perceive to be dangerous and this could become a self-fulfilling prophecy. It was also concluded that a high rate of killing by police could produce more defensive violence by civilians toward officers and a higher rate of homicide if the police function as role models for the legitimate use of deadly force in society (Langworthy, 1986).

However, correlational studies do not enable reliable conclusions about causality. Indeed, Langworthy (1986) has demonstrated that although there may be a spatial association between police and civilian homicide rates, the *temporal* relationship between these two variables is not significant. Furthermore, Fyfe (1988[b]) has shown that in many North American cities -- including Chicago, Dallas, St Louis and Metro-Dade -- rising rates of violent crime have *not* been associated with increases in police justifiable homicide rates. In fact, in New York City the rate of police shootings has decreased as the violent crime rate has risen (Geller & Scott, 1992). The available evidence supports neither of the abovementioned causal interpretations and it has been concluded that the positive correlation is the result of mediating variables that have yet to be identified (e.g. Geller & Scott, 1992; Fyfe, 1988[b]; Langworthy, 1986). But leaders in the field have acknowledged that:

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71 See Fyfe (1980[b]), Jacobs and Britt (1979), Sherman and Langworthy (1979), The Washington Star (2 September 1978), Kania and Mackey (1977), Sherman and Langworthy (1986), Brill (1977), Fyfe (1982[b], 1980[b]) and Kania and Mackey (1977) resp.

"... it is still possible -- and, indeed, intuitively plausible -- that some *combination* of factors related to general levels of violence in communities helps to explain some of the variation in the rates at which police shoot or shoot *at* criminals from city to city and over time. ... [However], [t]here are powerful forces, outside the ebb and flow of violent crime, that help shape the patterns and numbers of police-involved shootings" (Geller & Scott, 1992:90 & 62 resp.).

In the conflict model, the concept of power relations has been employed to explain intergroup violence including spatial variations in the use of deadly force by and against police. Structural theory constitutes the basis of this approach and in particular the underlying assumption that the level of violence in a society is determined by "broad-scale social forces such as lack of opportunity, institutional racism, persistent poverty, demographic transitions and population density" (Wolfgang & Zahn, 1983:854).<sup>72</sup> It has been theorised further that increased economic stratification in contemporary North America has heightened conflict between economic classes. Greater coercion has thus been required to maintain the advantaged positions of the middle and upper classes, and it is the police who have fulfilled this function on the part of the dominant classes. This means that higher rates of deadly force have been employed by the police against economically oppressed groups (Sorensen *et al*, 1993). Because the majority of the economically disadvantaged in the USA are black, interactions between the police and black people have been characterised by mutual suspicion and the probability of conflict has been heightened. Notably, it has been shown that the rate at which police kill is positively correlated with the proportion of black and poor people in an area (Chamlin, 1989). It has been postulated that the disproportional use of deadly force by police against black people accounts for much of the spatial variation in police deadly force usage in the USA (e.g. Jacobs & Britt, 1979; Knoohuizen *et al*, 1977; Takagi, 1974). Hence, black residential areas tend to be characterised by high rates of police deadly force.

Numerous studies have sought to examine a wide range of structural variables and indicators of social cohesion in relation to police deadly force, including for example income inequality, the numbers receiving social welfare, rates of divorce, unemployment and suicide (Geller & Scott, 1992). Although the findings have not been consistent, reviewers of the collective research data have tended to agree that economic inequality and the proportion of black residents have been the best predictors of spatial patterns of police justifiable homicides since the sixties (e.g. Sorensen *et al*, 1993; Jacobs & Britt, 1979). After comparing the research evidence for the community violence and conflict hypotheses, Sorensen *et al* (1993) have concluded that there is greater empirical support for structural variables as predictors of rates of police justifiable homicides, and meso-level indicators of community

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72 See Van Den Berghe (1974) and Cloward and Ohlin (1960).

violence are at best mediating factors.

Although there are mixed findings regarding the best structural predictors of rates of police deaths, the most reliable factors seem to be poverty and geographic region (Petersen & Bailey, 1988; The FBI, 1991[i] resp). Police are killed at a significantly higher rate in the southern states of the USA but there has been little agreement about the causes (The FBI, 1991[i]). Those who adhere to the conflict approach have tended to attribute the regional pattern to widespread poverty, a high concentration of black residents, and the history of institutional racism in the South. By contrast, police have tended to suggest higher rates of gun ownership in the area, and the warmer climate which discourages them from wearing SBA and encourages outdoor living which increases contact between police and civilians. But an empirically sound explanation for this geographic pattern of police risk has yet to be established (Geller & Scott, 1992).

### ***Police Organisational Factors***

Since the seventies numerous studies have explored the links between rates of police deadly force and a wide range of organisational factors (e.g. Alpert & Fridell, 1992; Matulia, 1985, 1982; Waegel, 1984[a]; Scharf & Binder, 1983; Binder *et al*, 1982; Fyfe, 1981[b], 1979; Sherman & Langworthy, 1979; Milton *et al*, 1977; Uelman, 1973). A review of the literature in this sphere shows that the following variables have commanded significant research attention: restrictive internal deadly force policies within police agencies, mechanisms for ensuring the consistent enforcement of formal policies and internal accountability among officers, including the role played by police managers and supervisors (e.g. Alpert & Fridell, 1992; Geller & Scott, 1992; Weishourd & Uchida, 1992; Nay, 1990; Mathie, 1989; Grennan, 1988; Weishourd *et al*, 1988; The NYSCCJ, 1987; Kleck, 1986; Cordner, 1985; Geller, 1985[a]; Matulia, 1982; Fyfe, 1988[a]; 1988[c], 1981[b], 1979; Milton *et al*, 1977).<sup>73</sup> More recently, the building of external accountability between police agencies and communities -- particularly by means of civilian review boards and other police-watching bodies -- has been stressed as critical to successful policing.<sup>74</sup> Much work has also been focused on the topics of weaponry, equipment and training. Service firearms and ammunition have been re-evaluated, alternatives to deadly force, especially less-than-lethal weapons and protective equipment, have been examined,<sup>75</sup> and training in violence reduction techniques and officer survival

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73 Especially monitoring officers' conduct, disciplining violations and rewarding compliance.

74 See Skolnick and Fyfe (1993), Kolts *et al* (1992), Goldstein (1990), Moore and Stephens (1991), Petre (1991[a], 1991[b]), Watt (1991), Uildriks and Van Mastricht (1991) and Terrill (1990).

75 See Pilant (1993[a], 1993[b], 1992), Meyer (1992[a], 1992[b], 1992[c]), Connor (1991), Biggs (1990), Geis and Binder (1990), Peak (1990), The British Columbia Police Commission (1990), Trostle (1990) and Geller (1985[a]).



tactics is being developed and tested.<sup>76</sup> Since the late eighties occupational stress among police has become a popular topic and mechanisms for monitoring, debriefing and supporting officers have been examined (e.g. Jones, 1989, 1988; Barendse & Van Gemert, 1988; McKenzie, 1988).

There is widespread agreement that police occupational subculture is a fundamental variable affecting police deadly force usage and the success of many violence reduction interventions. Just as high levels of violence in particular communities have been ascribed to the operation of subcultures that condone the use of force, a police occupational subculture has long been employed to explain excessive force and a lack of restraint in police use of deadly force (e.g. Skolnick & Fyfe, 1993; Crank *et al*, 1993; Geis & Binder, 1990; Fyfe, 1988[a], 1988[b]; Waegel, 1984[a]; Scharf & Binder, 1983; Westley, 1970, 1951).

According to Scharf and Binder (1983), police decisions to employ deadly force are made within four circles of moral decision-making, each of which must be taken into account. The outermost circle is the law: case-law and legislation. Within this circle are police regulations, then informal organisational norms or police subculture, and lastly individual officer's beliefs and attitudes. Police subculture, popularly known as cop culture, is said to comprise a set of understandings that are shared by officers as to when, against whom, and why police ought to use deadly force, as well as ways officers can justify their conduct retrospectively (Waegel, 1984[a]). New officers are socialised into this subculture and various informal social mechanisms such as negative and positive reinforcement operate to maintain compliance (Scharf & Binder, 1983). It has been postulated further that North American police subculture has traditionally condoned and even encouraged a lack of restraint in deadly force usage, that police agencies have not tended to reward restraint, and that negative peer group pressure has commonly been applied to those who have practised restraint (Scharf & Binder, 1983).<sup>77</sup>

Over the years numerous aspects of cop culture have been identified. For instance, it has been shown consistently that one of the core attitudes of police subculture is a belief in *street justice* over formal criminal justice and an aversion to due process protections. In other words, officers prefer to settle cases on the streets without considering the legal rights of suspects (e.g. Crank *et al*, 1993; Uildriks & Van Mastricht, 1991; Peak, 1990; Shernock, 1990; Sykes, 1990; Waegel, 1984[a]; Wilson & Kelling, 1982; Goldstein, 1977; Walker, 1977; Reiss, 1971[a]; Wilson, 1970). A second key feature is the *code of secrecy*: the occupation of policing operates as a 'closed shop' in which officers 'stick together', 'don't rat on one

76 See Geller and Scott (1992), Cheatwood (1991), Kruize and Wijmer (1991), Poole and Sampson (1991), Geis and Binder (1990), McCauley and Edwards (1990), The British Columbia Police Commission (1990), Fyfe (1989[a]), Wolfenden (1989), Schrader (1988), Geller (1985[a]) and Meadows and Trostle (1985).

77 However, restraint is fundamental to police subculture in Honolulu where it is considered unmanly to resort to deadly force, see Scharf and Binder (1983).

another' and are resistant to 'outsiders' particularly those who are not police.<sup>78</sup> Some authors have noted that the code of secrecy also fosters a 'siege mentality' in which officers view the world from a defensive and antagonistic position of 'us against them' (e.g. Uildriks & Van Mastricht, 1991; Peak, 1990; Shernock, 1990). These attitudes are said to constitute part of a broader policing ideology known as craftsmanship, the overall aim of which is to maintain public order rather than to enforce the law (Wilson, 1970). This ideology is based on a number of additional premises including *inter alia*: the opinion that on-the-job experience is the optimal mode of training for police-work and that formal education is ineffective; the belief that policing requires independence and discretion rather than deference to authority; and the view that record keeping and other administrative-type tasks are a waste of time (Crank *et al*, 1993).

The link between this kind of occupational subculture and high rates of deadly force usage among officers has generally been explained in terms of Sykes and Matza's (1957) techniques of neutralisation which permit police to overcome the taboos against killing, and vocabularies of motives which enable them to later justify their actions in ways that avoid censure (e.g. Waegel, 1984[a]; Van Maanen, 1980). The following three prospective neutralisations have been noted as key elements of police subculture: (1) it was not wrong to kill because there were special circumstances; (2) the suspect deserved to die; and (3) the killing served a higher purpose (Waegel, 1984[a]). These beliefs are strengthened when there is a loss of public confidence in the criminal justice system and widespread support for a tougher approach to law and order (e.g. Kruize & Wijmer, 1991; Waegel, 1984[a]). Furthermore, in racially polarised and economically divided societies cop culture is said to include racist stereotypes about the moral inferiority of black people, which serve to legitimate the abusive treatment of black suspects by police (e.g. Skolnick, 1986; Waegel, 1984[a], 1981; Scharf & Binder, 1983; Van Maanen, 1978; Bittner, 1975, 1973).

The unrestrained use of deadly force by police is further reinforced by the fact that negative sanctions against such conduct are highly improbable. Generally speaking, the formal control mechanisms within police agencies are known to be 'cop-friendly' and officers who violate police force regulations rarely receive more than a reprimand (e.g. Waegel, 1984[a]; Milton *et al*, 1977). In addition, the vagaries of legal standards governing the use of deadly force by police enable officers to justify most incidents as legitimate (e.g. Kobler, 1975[a]; Harding & Fahey, 1973). It is now widely accepted that even when there is *prima face* evidence of unlawful killing by police, the probability of criminal prosecution and conviction is extremely low (e.g. Chappell & Graham, 1985; Milton *et al*, 1977).

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78 See Crank *et al* (1993), Skolnick and Fyfe (1993), Pollock-Byrne (1988), Shernock (1987), Barker (1986), Blumberg (1985[a]), Goldstein (1977), and Westley (1970).

Hence:

"... [a police officer] uses violence illegitimately because such usage is seen as justifiable, acceptable and, at times, expected by his colleague group and because it constitutes an effective means for solving problems in obtaining status and self esteem which policemen as policemen have in common" (Westley, 1951:216).

Since this kind of process undermines the efficacy of laws and regulations designed to limit police deadly force, it is futile to simply increase the restrictiveness of legislation and formal police regulations (Waegel, 1984[a]; Sykes & Matza, 1957). Instead, it is crucial that the informal mechanisms operating to endorse a lack of restraint in deadly force usage among officers also be modified, in particular the attitudes of police managers and supervisors (e.g. Kruize & Wijmer, 1991; Waegel, 1984[a]).

Today changing traditional police subculture is generally considered to be a key target of strategies aimed at reducing violence and increasing restraint by police, and fundamental to the success community policing (e.g. Payne, 1993; Tafoya *et al*, 1992; Trojanowicz, 1991; Shernock, 1990). Consequently, the majority of North American police agencies underscore the objective of developing:

"... a principled organizational culture ... one that demonstrates in meaningful ways to police and community alike that force is exercised with restraint and that all people -- police officers, the public at large, and criminal suspects -- are treated by the agency with the basic respect due any human being" (Geller & Scott, 1992:58).

It is disturbing to note, however, that the new guiding police ideology of professionalism -- with its emphasis on service, self regulation, formal education, professional ethics and referents -- does not appear to have successfully dislodged the code of secrecy or traditional police attitudes on street justice and due process. Interestingly, it is age and long service among police which seems to produce positive attitudes to restraint (Crank *et al*, 1993; Hall, 1968).

## **CONTROL STRATEGIES**

### **Introductory Comment**

Although macro-level factors that fuel violence in society, like racial and gender oppression, unemployment and poverty, are recognised as theoretically relevant in understanding the nature and dynamics of social conflict, these variables have generally been neglected in efforts to reduce gun-related violence. This is despite the fact that:

"[s]trategies directed at reducing unemployment, poverty and inequality have every bit as much potential for producing short-term results as criminal-justice-system strategies ... [and that] [p]roducing short-term decreases in poverty and unemployment is difficult, not impossible" (Kleck, 1986:61).

There has also been little systematic investigation of the impact of reforms aimed at modifying macro-variables on the use of deadly force by and against police. Instead, the bulk of research on control strategies has been focused on meso-level police organisational variables largely under the control of police management and, hence, considered malleable (Geller & Scott, 1992; Geller & Karales, 1981[a]). To date most police agencies that have attempted to reduce the unnecessary use of deadly force by their officers have used interventions comprising combinations of the following elements:

- \* more restrictive policy governing the use of deadly force;
- \* mechanisms for the regular monitoring of officers' conduct and for assisting police with personal problems affecting work performance;
- \* systems for assessing officers' conduct and making recommendations on the management of those who exhibit inappropriate behaviour;
- \* training programmes of various types such as those designed to teach officers to apply new policy requirements, to improve police relations with racial and ethnic minorities, to increase the use of less-than-lethal tactics, to enhance officers' safety and shooting proficiency; and
- \* the introduction of a wider range of less-than-lethal weapons, equipment and tactics.

Literature abounds on the topic of control strategies involving the modification of different aspects of police organisations. However, methodologically sound evaluations of deadly force reduction initiatives are very scarce and unfounded claims abound. The bulk of the information on the impact of such interventions comprises experiences reported by individual police agencies, the majority of which fall short of the following basic requirements for sound assessments: the use of a range of indicators to measure expected consequences; the thorough examination of factors other than control strategies which may have produced change; and the comprehensive examination of unintended positive and negative consequences (Geller & Scott, 1992). This serious shortcoming underscores the critical importance of designing reliable methods for evaluating change prior to intervention.

### **Legal Reform, Prosecution and Litigation**

There are two basic circumstances in which the police are legally permitted to use deadly force in North America: arrest and private defence (self defence or the defence of another) (Alpert & Fridell, 1992). Whilst the defensive use of deadly

force has been relatively uncontroversial, allowing police to kill during arrests has been a highly contentious issue since as far back as 1930 (Geller & Scott, 1992). Like many British colonies the USA originally adopted the English common law any-fleeing-felon rule which permitted police to kill anyone who attempted to flee from arrest (Geller & Scott, 1992). In response to the report of the Wickersham Commission on Lawlessness in Law Enforcement in 1934, the American Law Institute (ALI) made the first formal recommendation to restrict North American police to using deadly force only against persons suspected of dangerous offences (Kelling & Stewart, 1991; La Fave, 1965 resp). In 1962 the ALI codified this proposition in the Model Penal Code, which became law over 20 years later. In 1985, after almost five decades of public pressure for this legal change, the US Supreme Court finally introduced the first national minimum standard for the use of deadly force by police in arrest situations in the now famous case of Tennessee v Garner (Geller & Scott, 1992).

This standard, more commonly referred to as the protection-of-life standard, limits police use of deadly force to arrest situations in which: (1) the person is suspected or has been convicted of a felony in which s/he has threatened or actually used deadly force; (2) there is a substantial risk that a suspect or offender will kill or seriously injure someone if s/he is not apprehended immediately; and (3) the use of deadly force does not create significant risk of injury to innocent parties (Alpert & Fridell, 1992). In short, this standard ostensibly prohibits the killing by police of suspects deemed to be *non-dangerous*. However, a person's dangerousness is predicted, inter alia, from the nature of his/her suspected offence/s and not from immediate behaviour. In other words, if a person is suspected of a violent offence, s/he is presumed to be dangerous even if s/he displays no immediate evidence to this effect. Thus, although the Tennessee v Garner ruling has often been hailed for abolishing the killing of unarmed, non-violent, fleeing suspects, this is not strictly true because police are still permitted to kill a person who is not currently violent, if s/he is suspected of an offence in which s/he threatened to use violence (Geller & Scott, 1992).

Although the majority of contemporary legal scholars agree that the any-fleeing-felon rule was obsolete and rightfully abolished, there is contention over whether the protection-of-life standard is optimal. Many consider the more restrictive defence-of-life standard, used by the FBI since the forties, to be preferable (Alpert & Fridell, 1992). The main objection to the minimum legal standard is that the nature of a suspected offence is an unreliable predictor of a person's propensity for subsequent violent behaviour (e.g. Petersilia *et al*, 1985; Monahan, 1981[a], 1981[b]). Indeed it has been concluded that:

"... nobody -- forensic psychologists, psychiatrists, parole boards, seasoned police officers -- has yet demonstrated an ability to predict a given individual's *future* dangerousness with anything approaching even 50 percent accuracy" (Geller & Scott, 1992:255).

By contrast, the defence-of-life standard permits police to employ deadly force against a suspect or offender only if s/he directly threatens life. Proponents of this standard have argued that it is more just to base assessments of dangerousness on the immediate threat posed by a suspect (Geller & Scott, 1992). There are also some scholars who believe that even the restrictive defence-of-life standard ought to be enhanced by placing an onus on police to actively avoid using deadly force (Alpert & Fridell, 1992). This postulate derives from the Scharf-Binder approach which emphasises planning and using less-than-lethal alternatives to decrease the need for deadly force. Notably, the proposal has generated a legal dispute over whether police could be held criminally liable for failing to avoid or creating the need to use deadly force (Alpert & Fridell, 1992; *The Michigan Law Review*, 1988). Civil liability and the standard of gross negligence have been proposed as alternatives but the question does not appear to have been resolved (Alpert & Fridell, 1992).

At this stage it is generally agreed that law reform to adopt defence-of-life as the minimum legal standard in the USA is improbable in the foreseeable future (Geller & Scott, 1992). This should not be viewed as cause for pessimism, nor should the envisaged impact be exaggerated. Such legal change could have the positive effect of requiring all police agencies to adopt more restrictive regulations on the use of deadly force. But it has been empirically established that the criminal prosecution of police who violate legal standards is uncommon (e.g. Alpert & Fridell, 1992; Geller & Scott, 1992; *The LA Times*, 8 September 1991; *The San Diego Union*, 21 December 1990; Blumberg, 1989[b]; Fyfe & Blumberg, 1985; Waegel, 1984[a]; Knoohuizen *et al*, 1977; Kohler, 1975[a]; Uelman, 1973). To illustrate, during the first half of the seventies only one in every 500 fatal shootings by US police resulted in a criminal prosecution and recent evidence suggests that this pattern holds for the nineties ((Kohler, 1975[a]; Geller & Scott, 1992 resp). Furthermore, addressing this issue would seem to be a complex task considering the factors which undergird the low prosecution rate among police. For example: the evidence police provide to prosecutors is often distorted in favour of accused officers;<sup>79</sup> prosecutors tend to be positively biased toward police because prosecutorial and policing functions are interdependent; and many prosecutors don't bring officers to trial because juries are unlikely to convict those who are seen to be acting against criminals in the interests of law abiding citizens (e.g. *The LA Times*, 20 September 1991, *The New York Newsday*, 15 November 1991; Blumberg,

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79 Mainly because police investigate their own cases and have a strict code of loyalty.

1989[h]).

The USA has a government policy which permits dual prosecution. This means that police can be prosecuted for criminal offences at the state level and for civil rights violations at the federal level. However, federal civil rights cases against police are even more infrequent than ordinary criminal prosecutions; only five cases were brought between October 1988 and May 1992 (The Chicago Tribune, 15 May 1992). Whilst some scholars consider this to be double jeopardy, others have noted that the additional level of adjudication can diffuse public protest when the outcome of a state trial is perceived to be unjust (Geller & Scott, 1992).

Research attention has been directed at the impact of criminal prosecutions on the use of deadly force by police but few studies have considered the effects of civil litigation, an important topic for investigation (Alpert & Fridell, 1992; Geller & Scott, 1992). Indeed civil proceedings enable a more textured and better evaluation of police conduct than criminal trials. In civil litigation the objective is to decide whether individuals and/or their organisations have been negligent or reckless, and this facilitates a more effective assessment of " ... police efforts to carry out their responsibilities with the minimum harm and maximum efficiency and effectiveness" (Klockars, 1993:295). It is also generally agreed that the threat of civil liability has some deterrent effect on officers and prompts police managers to improve restraint in the use of deadly force within their agencies (e.g. The Portland Oregonian, 26 April 1992; Blumberg, 1989[h]).

### **Police Regulations and Policy**

Since police regulations on the use of deadly force must be at least as stringent as the standards set down in the law, the importance of achieving legal reform is often stressed. Interestingly, however, it has been found that police policy development often precedes legal change (Alpert & Fridell, 1992). To illustrate: by the time that the US law was reformed in 1985, two-thirds of police agencies had already adopted deadly force policies that were as strict as, if not more stringent than, the new legal standard (Walker & Fridell, 1992, 1989). Furthermore, the law sets only the broad parameters governing the use of deadly force by police; specific guidelines are the province of policy. Hence, it has been argued that changing police deadly force regulations should take priority over efforts to modify the law (Alpert & Fridell, 1992).

Because it is *not* mandatory for police departments in the USA to have written regulations governing the use of deadly force, the existence and content of such policies varies greatly across agencies (Alpert & Fridell, 1992). Whilst the Tennessee v Garner ruling did seem to prompt North American police agencies to formalise their deadly force policies, some police departments still do not have written regulations whereas others have comprehensive formal policies that are more stringent than the national minimum standard required by law (Geller & Scott,

1992).

Since the early seventies numerous researchers have sought to examine the impact of increasing the restrictiveness of deadly force regulations on police rates of shooting. Uelman (1973) conducted one of the first of these studies in which he compared the policies and shooting rates of 50 police departments in Los Angeles County. The results showed that departments which had more stringent regulations on the use of deadly force were characterised by lower rates of shooting than those with more permissive policies. More specifically, restrictive regulations were associated with significantly lower shooting rates for *fleeing* suspects although there were also notable differences in the rates of defensive shootings (Uelman, 1973). This pioneering work was followed by a number of similar investigations conducted in different US cities, and the vast majority demonstrated support for Uelman's original finding that police shooting rates, especially in relation to fleeing suspects, decreased significantly after the introduction of restrictive deadly force policies (e.g. Sherman, 1983; Meyer, 1980[b]; Fyfe, 1979).

Police resistance to more restrictive policies on the use of deadly force has frequently been grounded in the belief that limitations will increase officers' risk of injury and death and will impede effective law enforcement (e.g. Geller & Scott, 1992; Gain, 1971). Research has generated very little evidence to this effect. One possible exception which is often cited is the case of the Atlanta Police Department. In the mid-seventies this agency implemented a new deadly force policy based on the protection-of-life standard. The use of deadly force was limited to arrest situations in which officers had personal knowledge of the dangerousness of fleeing suspects, warning shots were prohibited, as was shooting at moving vehicles and in circumstances where bystanders might be endangered (Blumberg, 1989; Sherman, 1983). Subsequently, although the rate of shots fired by officers decreased significantly, the rate at which police were injured rose and the arrest rate fell (Sherman, 1983). Whilst these findings may reflect negative consequences of certain restrictive regulations, the design of the study does not preclude the alternate explanation that the results were caused by an independent increase in the violent crime rate (Blumberg, 1989). To date the empirical evidence demonstrates that rates of police injury and death have either remained constant or have fallen following the introduction of more stringent regulations on the use of deadly force and, furthermore that rates of arrest and escape have *not* been negatively affected (e.g. Sparger & Giacomassi, 1992; The Dallas Police Department, 1990; Sherman, 1983; Meyer, 1980[a]; Fyfe, 1979, 1978; Gains, 1971; Tsimbinos, 1968). After the protection-of-life standard became law in 1985 reductions in police rates of shooting of fleeing suspects, and particularly black suspects, were consistently reported by US police departments (e.g. Geller & Scott, 1992; Sparger & Giacomassi, 1992; The Dallas Police Department, 1990). Perhaps the most striking change in police shooting rates was that reported by the Memphis Police Department after loosing



Tennessee v. Garner. As a result this agency introduced a more restrictive deadly force policy based on the standard required by the new law, as well as a comprehensive training programme comprising the simulation of potentially violent police-civilian encounters. Prior to 1985 the Memphis police had one of the highest rates of shooting fleeing felons in the USA. Thereafter there was a major reduction in shots fired and rates of shootings at fleeing and black suspects without a corresponding drop in the arrest rate for violent offences (Sparger & Giacoppassi, 1992).

It is important to note, however, that a causal relationship has *not* been established between restrictive deadly force policies and reductions in rates of police shootings. Many authors have maintained that the real engine of change is sustained public pressure on the police to increase restraint (e.g. Geller & Scott, 1992; Scharf & Binder, 1983; Friederich, 1980; Sherman, 1980[b]). In most instances it has not been feasible to assess the *independent* effects of specific changes to deadly force policies because it has been commonplace to introduce a number of reforms simultaneously such as outlawing shooting at moving vehicles and juveniles, and prohibiting warning shots. Even deadly force policies based on the protection-of-life standard have tended to vary in terms of their evidentiary requirements: some regulations have required that officers have only a reasonable suspicion or probable cause, others have called for direct personal knowledge that a fleeing suspect has committed a violent offence before permitting shooting to arrest (Geller & Scott, 1992).

Nevertheless, the introduction of formal, written regulations is generally viewed as a necessary basic intervention in the management of the use of deadly force by police. Besides the possibility of reducing rates of deadly force usage among police, the implementation of clear, simple and realistic regulations serves to convey managerial expectations to officers, communicates police standards to the public and reduces ambiguity in the assessment of culpability (Alpert & Fridell, 1992; Geller & Scott, 1992). It has thus been concluded that:

"[a]lthough establishing causation is always a difficult task, the pattern seems clear. Adoption of restrictive policies usually has been followed by marked decreases in shootings by police, increases in the proportion of shootings that are responses to serious criminal activity, greater or unchanged officer safety, and no adverse impact on crime levels or arrest aggressiveness" (Geller & Scott, 1992:267).

The post-Garner era has been characterised by continued public pressure for restraint by police and the overall trend among North American police agencies has been toward adopting increasingly restrictive deadly force policies (Geller & Scott, 1992). However, contemporary police have remained divided over the optimal basic standard, that is, between protection-of-life and defence-of-life. Unfortunately, research has not established exactly how many police agencies currently operate

using each of these standards (Geller & Scott, 1992). But it is common knowledge that a substantial proportion of agencies still defend the protection-of-life standard and have resisted the uniform introduction of the defence-of-life standard which has been promoted by influential police groups like the Commission on Accreditation for Law Enforcement Agencies (CALEA) and the National Organisation of Black Law Enforcement Executives (NOBLE). Indeed CALEA has even made the defence-of-life standard a prerequisite for the accreditation of law enforcement agencies. It has also been argued convincingly, by the president of the Police Foundation among others, that standards less rigorous than defence-of-life increase police discretion, the probability of errors in judgement, and abuses of power as well as enhancing opportunities for police cover-ups (e.g. Williams, 1991; *The Law Enforcement News*, July-August 1990). By contrast, permitting police to kill only in order to defend people from immediate and substantial threats to life, diminishes officers' need to speculate and may also reduce the impact of racism on police decisions to use deadly force (Geller & Scott, 1992). Arrest policies in which officers are required to assess the chances of subsequently apprehending a suspect when deciding whether to use deadly force, have been highlighted as particularly problematic. Racist stereotypes and the actual circumstances in black, urban ghettos feed police perceptions that black people are more difficult to apprehend, which is likely to increase the probability of officers using deadly force against fleeing black suspects (Geller & Scott, 1992).<sup>80</sup>

Opposition to the defence-of-life standard not only exists but has been gaining ground in recent years. The model policy of the International Association of Chiefs of Police (IACP) promotes the protection-of-life standard and in 1991 the FBI -- which has held to the defence-of-life standard for almost 50 years -- was granted legal permission to adopt the less stringent protection-of-life standard, and to re-introduce warning shots that don't foreseeably endanger bystanders (*The LA Times*, 13 June 1990). The basis of the FBI's argument has been that the defence-of-life standard requires "unreasonable restraint" because current circumstances make it necessary for agents to use deadly force against " ... [s]uspects who present a continuing threat of violence to the community, regardless of whether or not that violence is being exhibited at the moment agents discharge their weapons" (Geller & Scott, 1992:272-3). It is interesting, however, that the FBI have not yet formally changed their deadly force standard and the reason may well be the onslaught of public criticism, especially since the notorious Waco incident in Texas in which FBI agents killed a number of women and children. However, the FBI's turn-about has boosted the position of state and local police agencies that oppose the defence-of-life standard.<sup>81</sup> Despite such obstacles the US campaign for increased restraint in the use

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80 Lower public co-operation with police and increase risks in certain black areas.

81 In 1990 the Florida and Georgia State Police requested exemption from the CALEA defence-of-life requirement.

of deadly force by police and improved officer safety has not been deterred. Policy reforms based on the Scharf-Binder approach, which place an onus on officers to avoid using deadly force whenever feasible and do not protect police who create the need to use deadly force, are currently being tested in practice, e.g. in the Chicago, NYPD and Littlerock Police Departments.

One of the most positive changes to have taken place in the USA has been the gradual demise of police secrecy about deadly force regulations (The Dallas Morning News, 19 August 1988). The vast majority of North American police agencies now publicise their policies having learned the value of fostering this form of external accountability, especially when it comes to managing public protest in the wake of controversial killings by police. In fact many agencies have now adopted specific guidelines for dealing with the public relations aspects of police deadly force (Geller & Scott, 1992).

It is not only the basic standard which has been debated in terms of decreasing the use of deadly force by police via policy reforms. As far back as 1977 a survey conducted for the Police Foundation highlighted a range of additional policy considerations relevant to deadly force and showed that there was great disparity across police agencies in these practices (Milton *et al*, 1977). By the nineties there was still a lack of uniformity in policy on issues such as: (1) the use of deadly force by police against juveniles and the mentally ill, (2) shooting at or from a moving vehicle and attempting to stop a vehicle by taking up a position in its path, (3) the drawing and pointing of firearms, and (4) the use of warning shots. To expand: it has been contended that additional restraint in the use of deadly force ought to be required of police when dealing with juvenile and mentally ill suspects. Agencies adhering to the defence-of-life standard have tended to reject the need for further restrictions on the use of deadly force against such suspects. By contrast, some departments employing the protection-of-life standard have required that officers apply the more stringent defence-of-life standard in interactions with juveniles and mentally ill suspects, e.g. the Kansas City and Memphis Police Departments.<sup>82</sup>

After some dispute, it has now been generally accepted that police should not be permitted to fire shots at or from moving vehicles; the main rationale being that shots fired under such circumstances rarely hit their intended targets and, hence, endanger innocent bystanders (e.g. Alpert & Fridell, 1992; The New York Times, 25 August 1992; The IACP, 1989; Matulia, 1985). Furthermore, if a driver is shot s/he may lose control of a moving vehicle, thus jeopardising passengers and other road users. A few agencies have seen fit to explicitly prohibit the police tactic of stepping out in front of a moving vehicle in order to bring it to a halt, e.g. the Dallas Police Department. The reasoning behind this regulation is that it places officers at undue risk and almost inevitably necessitates the defensive use of deadly force. Indeed it is becoming increasingly common for police agencies to ban in principle all

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82 Also see the NYSCCJ (1987) tactical guidelines on mentally ill suspects.

tactics that *create* the need for police to use deadly force. This is part of the Scharf-Binder approach to the management of police deadly force. More recently the related topic of high speed vehicular pursuits by police has begun to receive attention in the field of deadly force. Proposals have been made for restricting the use of this common police tactic on the grounds that high speed vehicular chases constitute a significant threat to the lives of bystanders. Interestingly, it has been claimed that when used in high speed chases, police vehicles constitute a form of deadly force which must be controlled (Alpert & Fridell, 1992).

It is noteworthy that although police deadly force policies contain detailed restrictions on the firing of guns, very few have specifically limited the circumstances under which officers may draw and point their firearms (Geller & Scott, 1992; Milton *et al.*, 1977). This seems to be a serious oversight as the mere drawing of a firearm may affect the probability of violence in a police-civilian interaction: it may frighten or anger a suspect so increasing the chance of force being used, or alternatively, it may subdue a suspect making the use of force unnecessary. There is also the heightened risk of an unintentional shooting taking place once a gun is drawn. It has been suggested therefore that the restrictions on the firing of guns by police also be applied to the drawing of firearms. In other words, officers should not draw their firearms unless shooting is justified, necessary and unavoidable (e.g. Milton *et al.*, 1977).

Generally speaking, US police agencies consider warning shots to be ineffective and dangerous (e.g. Bentley, 1990; Burke, 1990; The LA Times, 13 June 1990). Allowing warning shots is also said to open the door for police to justify unintentional and even unlawful shootings (e.g. Milton *et al.*, 1977). The CALEA and IACP deadly force policies prohibit the firing of warning shots by police, as do the majority of contemporary police regulations (Geller & Scott, 1992). It is thus surprising that the FBI have recently sought to re-introduce the use of warning shots in situations where bystanders are not likely to be endangered (The LA Times, 13 June 1990). The legal position on warning shots is not as clear as the policy position and there is ongoing controversy among scholars over whether the Tennessee v Garner ruling allows warning shots (Burke, 1990).<sup>83</sup> At the crux of this dispute is the question of whether warning shots constitute deadly force. If this is the case it would seem contradictory to argue: "... that one can use a form of deadly force (warning shots) in order to create the justification for employing deadly force in the first instance" (Geller & Scott, 1992:271).

The following provisions have also been proposed for inclusion in police deadly force policies: (1) a prohibition on the carrying of service firearms by off-duty officers (2) a statement explicitly terminating the requirement that off-duty officers actively intervene in suspected lawbreaking; and (3) a ban on officers having more than one approved handgun while on duty. Police carrying so-called back-up

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83 Also see Geller and Scott (1992).

guns has been associated with greater risk taking, less control over their weapons, and officers planting guns to justify illegitimate shootings. The presence of additional firearms has often confused investigations into police shootings (e.g. Leslie, 1992; Fyfe, 1980[a], 1978; Milton *et al*, 1977). Instead of police toting more guns, training in marksmanship and weapon retention should be improved (e.g. The New York Times, 4 September 1990). Lastly, police deadly force policies must of course include the specific departmental procedures that officers are to follow in the wake of reportable incidents.

### **Policy Implementation and Enforcement**

The key to the success of restrictive deadly force policies is effective implementation and enforcement. Indeed:

"[e]nforcement is the ultimate test. What happens to the officer who indefensibly disobeys a policy? If nothing happens (or nothing very dramatic), the policy is just another piece of paper among many. If such an officer is fired, suspended, demoted, or otherwise seriously disciplined, the disciplinary action is an important indication that the policy is in fact a policy" (Milton *et al*, 1977:65).

Whilst punishment is a necessary aspect, it is not a sufficient means of successfully enforcing policy (Zacharias, 1991). In fact it is crucial *not* to punish officers for inconsequential errors as this simply encourages them to distort the way in which they report deadly force incidents (Skolnick & Fyfe, 1993). Changing established police practices and resistant subcultural norms takes time and requires a combination of interventions including inter alia: incentives, systems for supervising, monitoring and assessing officers' conduct, supportive mechanisms for stress management, as well as retraining and re-equipping officers and, at base, strong police leadership (Skolnick & Fyfe, 1993; Alpert & Fridell, 1992; Geller & Scott, 1992). Without police executives who are honestly committed to reducing the unnecessary use of deadly force by their officers, there is little hope of change among the rank-and-file (Sherman, 1983). Furthermore, because new policy requirements are usually discordant with entrenched practices, the biggest hurdle is getting police to accept and apply them. Experience has shown that policy reforms *imposed* by management without consultation tend to be resisted. Perhaps the most common example of this is the announcement of changes by way of written memoranda. The most effective method of implementing directives is to involve officers in the development of policy from the outset. After all, they are well equipped to assess the practical advantages and disadvantages of proposed changes (Geller & Scott, 1992).

Since the seventies there has been a move away from traditional chain-of-command investigations into police deadly force incidents. Most police agencies have introduced permanent internal review boards, although these vary greatly in

their composition and functioning (Geller & Scott, 1992). Review boards are designed to facilitate internal accountability within police departments. In general, officers are required to report specified incidents like firearms discharges, injuries and/or deaths. The boards then assess the legitimacy of police conduct and make recommendations for further action where internal policy and/or the law has been violated. The available literature indicates that certain features of police review boards have generally proven advantageous. To elaborate: it is preferable that these boards consider *all* incidents in which police fire shots rather than just those involving injuries or deaths (e.g. The NYPD, 1988; Matulia, 1985; Meyer, 1980[a]; Fyfe, 1979[b]). It is also worthwhile for boards to examine incidents in which the use of deadly force has been *averted* as this provides valuable insights for the development of preventative measures (e.g. Geller & Scott, 1992; Geller, 1985[a]). Furthermore, it appears better for review boards to be empowered and required to hand down *detailed* recommendations on the management of the officers involved and departmental changes to strategy, weaponry, equipment and training (Geller & Scott, 1992; Geller & Karales, 1981[a]). This is a relatively novel view of the purpose of review boards in which the emphasis has been shifted from discipline to prevention; the objective being to identify factors contributing to the unnecessary use of deadly force and to propose appropriate interventions. Overall, it has been shown to be imperative for review boards to *consistently* reward those who uphold regulations, punish officers for serious violations, and give those who make errors in good faith the opportunity to improve via training and support (e.g. Geller & Scott, 1992; Muir, 1977). For example, the Charleston Police Department's approach has improved rates of reporting and compliance with policy requirements: under this system officers who fail to report deadly force incidents in which policy has *not* been violated are disciplined, but those who report honest mistakes are re-trained rather than negatively sanctioned (Geller & Scott, 1992). In this respect, Fyfe (1989[c]) has emphasised the importance of review boards distinguishing between the willful unrestrained use of deadly force by police -- brutality -- and the unnecessary use of deadly force as a result of incompetence and/or ignorance.

"In short, it occurs when well-meaning police officers lack -- or fail to apply -- the expertise required to resolve as bloodlessly as possible the problems their work requires them to confront [:] when police lack the eloquence to persuade temporarily disturbed persons to give up their weapons, but shoot them instead. It occurs when, instead of pausing to consider and apply less drastic alternatives, officers blindly confront armed criminals in the midst of groups of innocent people. It occurs when officers called to quell noisy but non-violent disputes act in a way that provokes disputants to violence to which the police must respond in kind." (Fyfe, 1989[c]:467).

Review boards have made use of a range of punitive measures and rewards like temporary suspension from duty, undesirable re-assignment, demotion, favourable

re-assignment, commendation and promotion (Geller & Scott, 1992). Some of the more sapient boards have also recommended techniques aimed at assisting officers to change their conduct, such as retraining and counselling (Matulia, 1985). The importance of establishing internal reward systems for positively reinforcing commendable restraint among officers has been underscored as a key means of counter-balancing the established tradition of rewarding police for involvement in violence, *and* of creating alternative police role models (e.g. Fyfe, 1981[b]). The overall aim is to introduce among police officers the concept of bravery in restraint.

Finally, it has long been advised that police review boards comprise a mix of officers of different ranks from the agency being served and from other police departments, as well as civilians, particularly representatives from community organisations (Geller & Scott, 1992; The San Diego Union, 21 December 1990; Kerstetter, 1985). The inclusion of civilians has been largely a response to the criticism that police forces lack external accountability and cannot impartially evaluate their own conduct. Whilst many authors claim that civilian representation on review boards has not significantly improved objectivity, some agree that this form of oversight has increased public confidence in the police, at least to some extent (e.g. The San Diego Union, 21 December 1990). Indeed the eighties have seen a proliferation of mechanisms involving the civilian review of police-work in the USA (Walker & Bumphus, 1992, 1991). However, the general view of the efficacy of such endeavours seems to be somewhat pessimistic (e.g. Perez, 1992; The American Civil Liberties Union, 1992; Terrill, 1990; Kerstetter, 1985). In sum it has been concluded that civilians who are involved in these structures are either gradually 'tamed' or are simply 'toothless watchdogs' in a police dominated environment. Nevertheless, it is widely accepted that the building and maintenance of external accountability to the public is crucial to the success of a community style of policing.

### **Recruitment and Personnel Practises**

Psychological screening tests have proven ineffectual in identifying officers who are prone to perpetrating violence (e.g. Hargrave & Kohls, 1984; Saxe & Fabricatore, 1982; Nowicki & Stahl, 1978; Milton *et al*, 1977; Eisenberg & Kent, 1972). Similarly, empirical research has generally failed to identify individual officer characteristics which reliably predict a proclivity to use force (Geller & Scott, 1992). In particular, support has not been forthcoming for the widely held belief that lower levels of formal education among officers are associated with higher rates of deadly force usage (e.g. Geller & Scott, 1992; Sherman & Blumberg, 1981). There is, however, some evidence that older, more experienced officers and female police, tend to use deadly force less frequently (e.g. Martin, 1990; Grennan, 1987; Croft, 1986; Blumberg, 1983, 1981; Binder *et al*, 1982; Sherman & Blumberg, 1981). Although it would be unwise to base recruitment or assignment practices on these

tentative findings, further investigation would seem worthwhile.

One particular variable which has proven useful in predicting the future behaviour of officers is *past* conduct (e.g. The Independent Commission on the LAPD, 1991). This has been used as the basic rationale for setting up systems for monitoring officers' conduct (e.g. The Independent Commission on the LAPD, 1991; Alpert, 1989[h]; Geller & Karales, 1981[a]). The long term systematic tracking of police conduct provides early warning of tendencies to use force inappropriately, as well as other problematic behaviours, hence facilitating corrective intervention. It has thus been proposed that certain information pertaining to each officer be regularly recorded including inter alia: civilian complaints; charges against suspects for resisting arrest, assaulting police and disorderly conduct; all shots fired; involvement in incidents in which civilians have been injured; particulars of assignments, partners and supervisors; and performance evaluations, disciplinary and commendatory records (Geller & Scott, 1992). Monitoring officers' behaviour is also useful for distinguishing police who engage in racist practices. In this respect special attention should be paid to officers' membership or support of organisations on the far-right of the political continuum such as the Ku Klux Klan and Neo-Nazi groups. The advice to police management in the US in this regard has been clear: "... [officers] whose views conflict with the basic tenets of a free society should be weeded out of the organization lawfully but hastily" (Geller & Scott, 1992:302).

It has been demonstrated that police tend to experience high rates of substance dependence and divorce (e.g. The US News & World Report, 3 December 1990). Officers involved in deadly force incidents commonly suffer post traumatic stress, which in the longer term leads many to resign from the force (e.g. The LA Times, 4 June 1992; Russell & Beigel, 1990; Baruth, 1986). The major impact of job-related stress on police performance has been recognised, and particularly the effects on police decisions to use deadly force (e.g. Bibbins, 1986; Madamahe, 1986; Pendergrass & Ostrove, 1986; Stratton & Stratton, 1982; Stratton & Wroe, 1980). Numerous services have been made available to assist US police and their families in dealing with a wide range of problems. For example, there are support groups for officers with similar difficulties and for the families of those killed or injured in the line-of-duty (e.g. The FBI, 1992[ii]; Sawyer, 1989; Concerns of Police Survivors, 1988). The Seafield-911 Programme in Florida, which caters for officers suffering from stress, drug and alcohol abuse, has received much acclaim (Geller & Scott, 1992). The peer review group, aimed at retraining officers who have demonstrated undue aggression, is one of the most promising forms of assistance (The KCPD, 1991; Toch & Grant, 1991). Some success has also been achieved in overcoming the effect of macho police subculture which has tended to deter officers from seeking assistance with personal problems. For instance, police supervisors have been trained to identify behavioural symptoms and refer officers for professional



assistance. Numerous agencies have enforced a recuperative period of paid leave from duty and trauma counselling for officers involved in deadly force incidents (McMurray, 1990).

### **Training**

Since the late eighties in particular there has been a veritable boom in the field of police training, especially in the four main areas of: deadly force policy interpretation, conflict management tactics, human relations and cultural awareness, and the use of weapons and equipment. The overall objectives of these forms of training have been to reduce the unnecessary use of force by police and to improve officer safety (Geller & Scott, 1992).

Training officers to put a new restrictive deadly force policy into practice involves overcoming established methods and the norms of police subculture. Usually the greater the disparity between new and existing practices, the higher the resistance to change and, hence, the more thorough and comprehensive is the re-training necessary to achieve the desired results. Clear wording, the avoidance of abstract terminology, and the use of practical examples, can make new deadly force policy 'user-friendly'. However, application in real situations will always involve some degree of interpretation by officers. The main purpose of training police in new policy requirements is to ensure that they learn to apply these in the manner intended. The realistic simulation of the kinds of circumstances in which officers are likely to be faced with the decision of whether to employ deadly force has proven to be the most effective means of training police to apply new deadly force policy (Geller & Scott, 1992). Whilst there is obviously a need to re-train officers when new policy is introduced, regular refresher training on deadly force is also imperative (e.g. Geller & Scott, 1992; Geller & Karales, 1981[a]).

Conflict management is really the essence of police-work, for it is they who are required to intervene when civilians fail to resolve conflicts. It is logical therefore, that teaching officers skills for managing interpersonal conflict constitutes the basis of Violence Reduction Training (VRT).<sup>84</sup> Numerous such programmes have been developed, some involving sophisticated realistic settings in which deadly force incidents can be safely simulated, for example: Survival City at the Tampa Police Training Academy; Laser Village at the Los Angeles County Sheriff's Department; The Apartment of the NYPD; and Hogan's Alley at the FBI Academy in Virginia (Korzeniewski, 1990; The LA Times, 8 September 1991; Geller & Karales, 1981[a]; Slahor, 1992; Pledger, 1988 resp). Additionally, several more basic, yet effective, violence reduction role-playing programmes have been developed by various police agencies like the New York City, Chicago and Dade County Police Departments. Along with role-playing, videotape-recording is being

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84 See Fyfe (1989[c], 1988[c]), The Police Foundation (1988), Geller (1985[a]), and Geller and Karales (1981[a]) for literature reviews.

used increasingly in police VRT, both to impart information and to provide feedback to officers during training (Schrader, 1988). Contemporary police trainers tend to agree that the use of role-playing and realistic simulations of likely situations have proven to be the most effective techniques for VRT (e.g. Korzeniowski, 1990; Goddard, 1988). Indeed it has been stressed that training officers in unrealistic circumstances can actually be dangerous as this encourages the learning of inappropriate and ineffective tactics (e.g. Geiger *et al*, 1990; Korzeniowski, 1990).

Although VRT programmes vary in many ways, they tend to share the following two basic aims: a new approach to conflict, and a wide range of less-than-lethal tactics for dealing with potentially violent situations (Geller & Scott, 1992). In order to significantly reduce police use of deadly force, and particularly guns, it is vital to provide officers with a range of alternate means of achieving their law enforcement objectives; to expand the effective force continuum. Whilst the relevance of the second goal is somewhat obvious, the importance of the first objective is often underestimated. It should thus be emphasised that if an officer's approach to managing conflict is not changed, s/he is unlikely to employ alternatives to deadly force even if s/he has the necessary skills and equipment. In essence then, the key to VRT is to teach officers to prioritise the use of non-violent over violent tactics and less-than-lethal force over deadly force. In other words, police must come to accept that their ideal role is to defuse potentially violent situations *without* having to resort to force; to prevent rather than win a fight (Rutledge, 1988). Police must be trained to uphold in practice the principles of restraint, minimum force, incremental use and proportionality.

Because the body of literature on less-than-lethal control tactics for police is voluminous, only a brief overview of some of the central issues has been included here.<sup>85</sup> According to police weapons and tactics experts the following comprise the repertoire of less-than-lethal police control tactics which are generally divided into unarmed tactics and strategies involving the use of less-than-lethal weapons (Clede & Parsons, 1987:6-8):

- ( 1) body language;
- ( 2) verbal communication;
- ( 3) unarmed restraints and come-along holds;
- ( 4) neck restraints;
- ( 5) the controlled use of short sticks and batons;
- ( 6) handcuffing methods;
- ( 7) knife-combat techniques;
- ( 8) mechanical devices like capture nets and physical impact weapons;
- ( 9) electronic devices;
- (10) chemical devices.

The comprehensive use-of-force-options model, which has been summarised in the

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85 See Graves and Connor (1992), Connor (1991, 1990), Schultz (1990), Connor and Summers (1988) and Clede and Parsons (1987).

Table 4.6, undergirds a substantial proportion of contemporary US police VRT programmes (Geller & Scott, 1992).<sup>86</sup> The force-options listed on the right hand side of Table 4.6 comprise a continuum of force and are grouped into three categories defined by Connor and Summers (1988:1) as follows: (1) no force options; (2) ordinary force options involving the use of physical force not likely or intended to cause death or serious injury; and (3) extra-ordinary force options requiring the use of force likely to result in severe injury or death. The authors have emphasised, however, that if ordinary force is abused, the effects may be those of extra-ordinary force. To illustrate, there has been much negative criticism of the police use of certain forms of neck restraint like the arm-bar technique which has been associated with an unacceptably high fatality rate (Geller & Scott, 1992).<sup>87</sup>

The model also includes the following five types of civilian conduct in relation to police intervention: (1) the most common civilian response is co-operation with police (the remaining four all involve various levels of non-compliance); (2) Level I Resistance generally refers to verbal opposition to officers' instructions;<sup>88</sup> (3) Level II Resistance includes physical expressions of opposition to police requests that do not involve force, like holding onto the steering wheel when instructed to step out of a vehicle, and walking away from an officer after being told to stand still; (4) Level I Assault refers to physical attacks by suspects on officers which are *not* likely to cause serious injury; and (5) Level II Assaults are attacks that are likely to severely harm or even kill officers.

**Table 4.6:**  
**Basic Components of the Use-of-Force-Options Model.**

Levels of Threat by Civilians	Appropriate Levels of Force by Police
Co-operation	NO FORCE OPTIONS: - controlled confrontation - body language - verbal persuasion
Level I Resistance	NO FORCE OPTIONS: - body language - verbal persuasion  ORDINARY FORCE OPTIONS: - contact controls <sup>89</sup> - joint restraints <sup>90</sup>

86 The first version was proposed by Connor and Summers in 1988. A more recent revision was put forward by Graves and Connor in 1992.

87 In 1982 the LAPD banned the use of neck restraints by police.

88 Otherwise termed "preliminary cues of resistance" (Connor, 1991:31-2).

89 Like the escort position, come-along and blanket holds.

90 Like handcuffing and ankle-cuffing techniques.

	<ul style="list-style-type: none"> <li>- weapon-assisted leverage techniques <sup>91</sup></li> <li>- nerve centre controls <sup>92</sup></li> </ul>
Level II Resistance	<p>NO FORCE OPTIONS:</p> <ul style="list-style-type: none"> <li>- body language</li> <li>- verbal persuasion</li> </ul> <p>ORDINARY FORCE OPTIONS:</p> <ul style="list-style-type: none"> <li>- contact controls</li> <li>- joint restraints</li> <li>- weapon-assisted leverage techniques</li> <li>- nerve centre controls</li> <li>- weapon-assisted pain compliance techniques <sup>93</sup></li> <li>- chemical irritants <sup>94</sup></li> <li>- electrical devices <sup>95</sup></li> <li>- intimate impact weapons <sup>96</sup></li> </ul>
Level I Assault	<p>NO FORCE OPTIONS:</p> <ul style="list-style-type: none"> <li>- body language</li> <li>- verbal persuasion</li> </ul> <p>ORDINARY FORCE OPTIONS:</p> <ul style="list-style-type: none"> <li>- contact controls</li> <li>- joint restraints</li> <li>- weapon-assisted leverage techniques</li> <li>- nerve centre controls</li> <li>- weapon-assisted pain compliance techniques</li> <li>- chemical irritants</li> <li>- electrical devices</li> <li>- intimate impact weapons</li> </ul> <p>EXTRA-ORDINARY FORCE OPTIONS:</p> <ul style="list-style-type: none"> <li>- extended impact weapons <sup>97</sup></li> </ul>
Level II Assault	<p>NO FORCE OPTIONS:</p> <ul style="list-style-type: none"> <li>- body language</li> <li>- verbal persuasion</li> </ul> <p>ORDINARY FORCE OPTIONS:</p> <ul style="list-style-type: none"> <li>- contact controls</li> <li>- joint restraints</li> <li>- weapon-assisted leverage techniques</li> <li>- nerve centre controls</li> <li>- weapon-assisted pain compliance techniques</li> <li>- chemical irritants</li> </ul>

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91 Like stun grenades to distract suspects, capture nets and water canons.

92 Like pressure-point controls and neck restraints.

93 Like jabbing or applying pressure to points below the neck using batons or short sticks.

94 Like teargas and oleoresin capsicum.

95 Like stun guns and Tasers.

96 Like short sticks and batons.

97 Like the pneumatic piston impact weapon, less-than-lethal projectiles like bean bags and sting-rags.

- electrical devices
- intimate impact weapons

#### EXTRA-ORDINARY FORCE OPTIONS:

- extended impact weapons
- weaponless techniques with debilitating potential <sup>98</sup>
- weapon techniques with debilitating potential <sup>99</sup>
- service firearm
- supplemental firearm <sup>100</sup>

*Sources:* Graves and Connor (1992), Connor (1991) and, Connor and Summers (1988).

Two of the key advantages of using the use-of-force-options model in police VRT are that it enables the teaching of a range of explicit tactical options rather than abstract notions, and that the use of restraint is emphasised in all types of interactions between police and civilians. Thus officers are trained to consider the use of less-than-lethal tactics even in the most dangerous of circumstances. One of the most productive developments in VRT has been the integration of the use-of-force-options model and the sequential decision-making approach. Connor's work has been applied to the five-phase Scharf-Binder model (1983) by adding the stage of "less-than-lethal physical control tactics" (Geller & Scott, 1992:326). This now constitutes a fourth and rather vital phase prior to the final frame decision of whether to use deadly force. The sequential decision-making model has been particularly influential in shifting the established view among officers that decisions to use deadly force are spilt-second phenomena and hence not amenable to modification by training (e.g. Kolts *et al*, 1992; Fyfe, 1989[c]). VRT based on this approach teaches officers that, from the time they become aware of an imminent encounter with civilians, their decisions and actions affect the likelihood of subsequent violence. Because officers are likely to suffer tunnel-vision once they are actually confronted with a life-threatening situation, training in decision-making has tended to focus on improving the way in which officers' approach an interaction and particularly the importance of maintaining a strategic yet protected position and using communication to contain suspects (e.g. McCarthy, 1992; Moriarty, 1990; Smith, 1990; Wade, 1990). It is now widely acknowledged that officers who have poor communication skills are less successful at diffusing violence (e.g. Toch & Grant, 1991; Toch, 1969). As a consequence the programme known as Verbal Judo or Tactical Communications has become popular among North American police agencies (The Crime Control Digest, 18 May 1992; The LA Times, 3 May 1992; Jamieson *et al*, 1990; The LA Times, 8

<sup>98</sup> Like martial arts techniques.

<sup>99</sup> Like knife fighting techniques.

<sup>100</sup> A controversial option now widely rejected.

May 1990). The stated objective of this training is to teach officers "... how to stay calm and professional under verbal assault, and how to generate voluntary compliance from the most difficult people" (Geller & Scott, 1992:314-5). It has also been proposed that officers be taught about the ways in which they unintentionally frighten civilians into using defensive force (e.g. Toch & Grant, 1991; Griffin, 1990). This is particularly important considering the widespread belief in minority groups that the police are more likely to use violence against them.

Intervention training (IT) is one of the most interesting new developments in VRT. Prompted by the Rodney King case, IT focuses on teaching officers how to calm and control police colleagues who become overly angry or inappropriately violent, so as to avoid the escalation of conflict. This type of training has already been introduced into the California Police Officers Standards and Training programme, as well as the programmes of the Dallas and Sacramento Police Departments (Geller & Scott, 1992). The success of such initiatives may well be enhanced by the fact that under US law any police officer who fails to attempt to prevent a constitutional violation may be held civilly and/or criminally liable (Spector, 1992). IT seems to present a way of working *with* the police subculture of secrecy and loyalty which has tended to prevent officers from divulging information to supervisors about colleagues who use force with a lack of restraint (The Portland Oregonian, 26 April 1992).

Officer Survival Training (OST) is usually integral to contemporary VRT programmes as the overall aim is to minimise the violence used by police while maximising their safety. It has been customary to school officers in the following so-called "ten deadly errors" derived from actual cases in which police have been killed unnecessarily: (1) failing to adequately care for and remain proficient in the use of weapons and equipment; (2) using improper search and hand-cuffing techniques; (3) being sleepy or falling asleep while on duty; (4) becoming complacent, especially when engaging in apparently routine activities; (5) not paying attention to the danger signs; (6) adopting an unprotected position; (7) failing to watch a suspect's hands; (8) not waiting for backup; (9) being preoccupied; and (10) becoming apathetic (Albrecht, 1992:199). Originally, OST included only those tactics designed to decrease the risk of injury and death for officers in encounters with civilians, for example, the value of taking cover, the use of protective clothing and equipment, the importance of backup and temporary disengagement when necessary. A wider conception of OST has now been developed, the aim of which is to improve the overall legal, psychological and physical well-being of police officers. The teaching of life-skills designed to prevent suicide, divorce, alcohol and drug dependence among police, as well as general stress management techniques, now frequently comprise aspects of OST (The Chicago Free Weekly, 22 November 1991). In contemporary OST there has also been a specific focus on teaching police to deal productively with their own fear in violent confrontations and on providing

post-shooting trauma counselling (e.g. Solomon, 1990; Geller, 1986, 1985[a]; Matulia, 1985).

Considering the glut of descriptive literature on VRT and OST, it is disappointing to find that there has been limited empirical evaluation of their impact. However, a substantial number of police departments have attributed a range of positive effects to VRT initiatives (Geller & Scott, 1992). One of the most thorough assessments has been conducted by the Metro-Dade Police Department. Following VRT and the introduction of a more restrictive deadly force policy this agency documented a long term decrease in the rate of shots fired by police, in the rates of injuries and deaths of officers, as well as improvements in crime control and public relations (Torres, 1992; Alpert, 1989[b]; Fyfe, 1989[a], 1988[c], 1986[b]; The Police Foundation, 1988). In addition, the Memphis Police Department has reported a significant decrease in the shooting rate after the implementation of a more restrictive deadly force policy in combination with an OST programme (Sparger & Giacomassi, 1992). The Chicago Police Department has been recognised for developing one of the best deadly force decision-making training programmes based on the Scharf-Binder approach. This training is said to have produced a significant long term reduction in the police shooting rate (Geller & Scott, 1992). However, it should also be noted that the Chicago and San Diego Police Departments have reported *short* term increases in the rate of police shootings consequent to OST (Geller & Scott, 1992; The Crime Control Digest, 3 June 1991). This has been attributed to the use of programmes that overemphasise the danger confronting officers, thus making police fearful and trigger happy (Geller & Scott, 1992). Such negative outcomes have spurred calls for the systematic investigation of the impact of different training programmes on officers' attitudes and conduct.

Nevertheless, the available evidence seems to indicate that VRT and OST have the potential to reduce violence by and against police officers, especially when combined with other interventions like policy changes. This being said, it must be borne in mind that no matter how effective the training, like any skill, some officers will be more proficient than others. It is thus crucial that managers and trainers monitor officers' conduct and utilise this information to inform decisions about assignments. To illustrate: it may be wise to avoid assigning officers who demonstrate little proficiency at diffusing violence to high risk duties. It has also been stressed that managers should not hesitate to re-assign to administrative duties or dismiss officers who, after intensive training, continue to display a lack of restraint in the use of force (Schofield, 1990).

VRT is generally complemented by Shooting Proficiency Training (SPT). Although officers must be trained in restraint, when necessary they must also be able to use their firearms proficiently. SPT is one of the oldest and most basic aspects of police training (Geller & Karales, 1981[a]). Although the frequency of SPT for police has been increased over time, it is still argued that the usual once or twice

yearly training is insufficient and that more regular training is required in order for officers to develop and maintain confidence and prowess in the use of their guns (Rutledge, 1988). It might be surprising to note that the average US police officer is not a particularly accurate marksman in real-life circumstances (e.g. The New York Times, 29 August 1992; Matulia 1985, Geller & Karales 1981[a], 1981[b]).<sup>101</sup> In fact it is:

"... a Hollywood-generated myth that officers can shoot a handgun under combat conditions accurately enough to 'wing' rather than kill a suspect ... and can invariably accomplish their tactical objectives with a single shot" (Geller & Scott 1992:104).

The police have been repeatedly criticised for having to fire too many shots before striking their intended targets; this spray-and-pray method of shooting increases the risk to bystanders and property (Geller & Scott, 1992). Hence, one of the main goals of SPT programmes is to reduce the number of shots fired by improving police marksmanship (Pilant, 1992; McCarthy, 1992). Significantly, police leaders are now beginning to accept that stopping power can be more successfully improved by enhancing officers' skill at bullet placement, than by arming them with more lethal firearms and ammunition (e.g. Cerar, 1991; The IACP, 1990[b]). Firearm training experts agree that target shooting under artificial circumstances is an ineffective means of improving marksmanship under real conditions, and should only be used for teaching the safe-handling of firearms (e.g. Fairbairn & Sykes, 1987). Instead, it is deemed vital to train officers to use their guns in circumstances as close as possible to those they are likely to experience (Morgan, 1992), such as:

"... at night with dim or variable lighting, after running several blocks, with multiple opponents to think about, with other officers and bystanders on the scene, and while wearing on-duty clothing (Geller & Scott, 1992:341).

The current trend is to conduct SPT using realistic simulations of actual conditions like the Replicative Outdoor Training Range of the Provo Police, the Replicative Firing Range of the Anaheim Police, and the programmes of the FBI Academy in Virginia and Training Centre in Georgia (Nielsen, 1990; Schrader, 1988; Geller & Scott, 1992 resp). The better SPT programmes do not only address bullet placement, but also cover the safe-keeping, retention and safe-handling of firearms and ammunition. In view of the substantial number of officers who have been shot with their own guns, weapons retention tactics have become an important aspect of SPT (Geller & Scott, 1992). Since officers are likely to handle guns other than their own, for instance when disarming suspects or conducting search and seizure initiatives, it is also crucial that police be trained to safely handle the kinds of guns

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101 The civilian strike rate against police is even poorer, see The New York City Transit Police Department (1991) and Cerar (1990).



they are most likely to encounter (Carter *et al.*, 1990).

Training police in human relations and cultural awareness has become increasingly popular since community policing has been widely adopted. These topics now constitute important aspects of training programmes aimed at violence reduction. The rationale undergirding human relations training is that by treating civilians with more respect, officers can diffuse potential violence and serve as positive role models (The New York Times, 20 July 1992).<sup>102</sup> "[D]isrespect is a vicious cycle and police initiatives, taken day by day and beat by beat across the nation, can influence whether mutual recrimination and hostility rise and fall" (Geller & Scott, 1992:302). Overall, it is envisaged that bettering police human relations skills will improve rapport with civilians, thus reducing unnecessary violence and enhancing public co-operation with the police (Pratt, 1990).

Initiatives to reduce police racism and improve inter-racial relations between officers and civilians have become a core aspect of contemporary police human relations training programmes. Although ethnic or race relations training (RRT) programmes are many and varied, the following general guidelines developed by the British police have been widely applied by police forces throughout the world: (1) undergird RRT with organisational policy and other interventions aimed at eliminating racism and promoting equal opportunity within the police force; (2) conduct RRT as part of other key training programmes rather than as a separate course; (3) design RRT to target knowledge, attitudes and behaviour simultaneously; (4) frame RRT as a means of improving police professionalism in the context of a multicultural society, and not as an exercise in personal criticism; (5) deal with racism and ethnicity directly, as well as within the more general context of equal opportunity and community relations; (6) use a range of training techniques, particularly those which utilise officers' personal experiences and enable controlled learning from first-hand experience; and (7) involve civilian experts in design and delivery (Oakley, 1990).

Cultural Awareness Training (CAT) has become a particularly popular component of police training in race-relations. The main aim of CAT is to develop officers' understanding of different cultures so as to decrease the chances of police misconstruing non-threatening conduct as dangerous, and to reduce the probability of officers' inadvertently threatening suspects, so causing defensive behaviour which may escalate into violence (e.g. The LA Times, 31 January 1992; Weaver, 1992; Littleton, 1990; The IACP, 1990[a]; Geller, 1986; Geller & Karales, 1981[a]; Kochman, 1981). Reducing ethnocentrism among police also improves their capacity to distinguish among persons who belong to groups different from their own (Goldstein, 1991).

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102 Civilians, especially youths, are also being targeted for such training, e.g. the Washington Centre for the Prevention of Handgun Violence and the New York City Programme for Resolving Conflict Creatively. See The Chicago Tribune (22 May 1992) and Miedzian (1991) resp.

### Less-than-Lethal Weapons and Equipment

There is ongoing debate over the definition, but for heuristic purposes it is generally accepted that less-than-lethal weapons are those which, when used as designed, do not usually cause death, "serious or permanent injuries except possibly to persons with unusual susceptibility" (Geller & Scott, 1992:358-9). It has been argued persuasively that firearms are not the optimal weapon for law enforcement purposes, because they are designed to kill and the objective of police is to temporarily incapacitate resistant suspects. Indeed the hopes of many who would reduce the police use of deadly force have been pinned on substituting the police gun with a less-than-lethal weapon which "nonviolently and instantly immobilizes adversaries" (Geller & Scott, 1992:358). "[T]he ideal nonlethal weapon would be hand-held, operated by one officer who would carry it on the equipment belt, allowing appropriate distance between the officer and the suspect, temporarily yet harmlessly incapacitating only to the intended target, and easy to use and maintain" (Meyer in: The Crime Control Digest, 8 June 1992). Regular demands have been made for the development of more effective less-than-lethal weapons for policing, at least since 1969. It seems, however, that the ideal replacement weapon has yet to be produced. Today the police still use less-than-lethal weapons as *supplements* to firearms. Nevertheless, a wide range of useful and promising tools are available like: batons and short sticks, teargas, electrical stun devices, less-than-lethal projectiles, capture nets, extended-reach grabbing devices and a range of protective equipment.<sup>103</sup> Work in this field is also booming, literature is abundant and many less-than-lethal weapons have been thoroughly evaluated: the assessment of less-than-lethal tactics in the LAPD between 1981 and 1991 is a good example (see Table 4.7). On the basis of these findings it was concluded that Tasers and teargas are effective less-than-lethal weapons which resulted in:

"fewer and less severe injuries than conventional force types (baton, karate kick, flashlight, swarm, and miscellaneous bodily force)". ... The Taser has saved lives. Major injuries have been averted. There should be a Taser in every squad car in this country, and they should be used as the weapon of choice over more injurious tactics such as batons and kicks" (Meyer 1991[a]:44).

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103 See Geller and Scott (1992:364-398), data collected by the Institute for Law and Justice, Meyer (1992[a], 1992[b], 1992[c], 1991[a], 1991[b]), The KCPD (1991), The IACP (1991[c], 1989[a]), Jamieson *et al* (1990), The Journal of Contemporary Criminal Justice (1990) and the NIJ-database.

Table 4.7:

**Efficacy and Injury Rates for Less-than-lethal Weapons and Tactics, the LAPD 1981-1991.**

Less-than-Lethal Tactics	Efficacy Rates (%)	Police Injury Rates (%)	Suspect Injury Rates (%)
Flashlights	96	4	80
Miscellaneous Force	94	15	46
Swarm technique	92	16	24
Kicking	87	11	26
Batons	85	16	61
Teargas	85	0	0
Taser	85	0	0
Punching	75	36	64

Sources: Meyer (1992[a], 1991[a]).

It is thus important that police agencies do not reject less-than-lethal devices without thorough empirical assessment of their impact in the field. In choosing to introduce a particular less-than-lethal device or tactic for police use, many factors ought to be taken into account such as the purpose to be served, reliability and efficacy, safety for users, recipients and bystanders, acceptability among officers and the public, training requirements, and the cost of purchase and maintenance (Geller & Scott, 1992). Notably, adverse public opinion can prevent police from using of the best available less-than-lethal equipment. This underscores the importance of the police actively providing comprehensive information and consulting with the public about less-than-lethal tools and tactics.

Soft body armour (SBA) has been hailed as a breakthrough in the field of officer safety. Although SBA only protects the torso against standard types of ammunition, it is a major improvement on the old heavy flack jacket in terms of protective efficacy and comfort (The IACP, 1990[c]). In the two decades since SBA was first introduced among North American police there have been no reported failures of this equipment and it has saved the lives of 1448 officers (The IACP, 1989[a]), Slavin, 1992[a] resp). However, by 1990 only 24% of local police departments in the USA provided and required their officers to wear SBA (The Bureau of Justice Statistics, 1992[a]; 1992[b]). Cost appears to have been the main obstacle preventing the widespread use of SBA among police, for it has been shown that when SBA is provided, officers tend to wear it (The Law Enforcement News, 31 March 1991).<sup>104</sup> In view of its impressive track record, there is a growing trend among police agencies to provide and mandate the wearing of SBA by officers

<sup>104</sup> The Chicago Police have financed SBA from drug asset forfeitures, see Brown (1992).

(Brown, 1992; Cerar, 1990; The CALEA, 1988). SBA fabric is currently being used to line shields and helmets, and a textile which is resistant to knives as well as bullets is in production. This kind of equipment is likely to further enhance the protective capacity of standard plastic shields and helmets which have been effectively used in riot management (Geller & Scott, 1992).

At present an optimism has begun to infuse those working in the field of less-than-lethal weapons, as many believe that the development of an effective and safe substitute for the gun is imminent (e.g. Geis & Binder, 1990). It has been claimed that the US military are already testing various incapacitating, less-than-lethal chemical substances, some of which are designed to be administered via darting guns. Certainly the US government has been making substantial resources available to achieve this objective (Geller & Scott, 1992). On the pessimistic side, however, there has been a consistent trend toward arming US police with more powerful firearms. Despite a lack of conclusive evidence and a great deal of disagreement among experts in the field, there has been a tendency to replace revolvers with semi-automatic pistols as standard issue firearms.<sup>105</sup> This could indicate a so-called arms race between the police and criminal suspects, or as one police expert has explained:

"[i]f a criminal out there has an AK-47, does that mean we [the police] have to have AK-47's with at least the same capacity of rounds? Is that how we out-gun? If someone throws a hand grenade at an officer, does that mean we throw two back? Where do you stop? Are we [the police] protectors of life and property, or are we military units?" (Pilant, 1992:35).

Those who support this position maintain that arming the police with more powerful firearms is a dangerous and ineffective strategy. The fact that semi-automatic pistols hold more ammunition is not particularly advantageous to officers since most shootings between police and civilians are over within three shots. The critical factor is accurate bullet placement rather than the quantity of available ammunition (The New York Times, 4 September 1990). Thus, priority ought to be afforded training in shooting proficiency to improve police marksmanship and officer survival tactics, including the wearing of SBA (Newsweek, 19 November 1990). Nevertheless, as long as the police are armed with guns and the munitions industry continues to be a multi-billion dollar enterprise, debates over the optimal type of gun and ammunition for routine police-work are likely to continue.

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105 See Geller and Scott (1992:343-357), Kindrick (1992), Markman (1992), Bratton (1991, 1990) and Edwards (1991[a], 1991[b]) on the debate over semi-automatics.

## CHAPTER FIVE

### LITERATURE REVIEW PART IV:

#### Guns and the Former South African Police Force

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##### INTRODUCTION

Today the South African Police force (SAP), which was investigated as part of this study, no longer exists. It has been replaced by the South African Police Service (SAPS) established in terms of Act 68 of 1995. The changes involved have been dramatic and some are still in progress. Indeed the entire police organisation, from the level of government to local agencies, has been restructured and a new philosophy of policing adopted (Van Wyk, 1995). Because the empirical research conducted for this thesis pertains to the period from 1984 to 1991, it is imperative that the findings be interpreted in relation to the former SAP and the sociopolitical conditions that characterised this earlier time span. Hence, literature pertaining to the SAP constitutes the focus of this review, and reforms made to the police force since 1992 have been discussed in relation to the proposed firearm strategy in the final chapter.

##### DATA SOURCES

It is important to note from the outset that access to information on the SAP and its activities was restricted to a degree that surpassed most modern police forces. Whilst it was common practice, at least until the late eighties, for police organisations worldwide to strictly limit public access to police data, the SAP operated like the military in this respect, particularly during the peak civil war years. Furthermore, this police secrecy was actually reinforced by law. In terms of the former Police Act 7 of 1958 as amended, anyone who published information about the police administration or practices could be prosecuted (Slabbert, 1985). More specifically, this legislation prohibited the publication of information pertaining to the constitution, methods, movements, deployment or actions of any officer involved in combatting or preventing so-called terrorist activities, and those against whom police action was directed.<sup>1</sup> Contravention of this provision carried a penalty of a fine up to 15000 rand and/or up to eight years imprisonment. A further provision outlawed the publication of any "untrue" information about the SAP and the onus was placed on an accused to prove that s/he had reasonable grounds for believing the veracity of information concerned. The penalty here was a fine up to 10000 rand and/or up to five years imprisonment. Drawing or photographing anyone in or escaped from custody, and accused and witnesses in criminal trials, was also

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1 Defined under the Terrorism Act 84 of 1967 as amended.

prohibited. Contravention carried a penalty of a fine and/or up to one year imprisonment.

This legislation combined with various emergency regulations made data collection by means of observation increasingly hazardous after 1984. Since the bulk of police action during this period was by definition anti-terrorist, anyone reporting on the SAP was at risk of prosecution. Despite the hazards, however, during the civil war in South Africa community-based (CBOs) and non-governmental (NGOs) organisations -- particularly Advice Offices -- monitored police activities throughout the country and the liberal press played a key role in bringing police abuses to public attention. Much of our knowledge about the SAP over this period has been derived from these sources and to a lesser extent from commissions of inquiry and evidence led in court cases involving police.

Direct access to information about the SAP was severely curtailed and police public relations mechanisms were used to carefully filter what was released to the public. To illustrate: between February 1987 and 1988, most (74%) of the applications the press made to the SAP for permission to publish police-related information were refused (Hansard, 27 April 1988:1209). Researchers were also denied access to data collected by the police and were generally not permitted to interview officers. By 1988 it was noted that:

"... the government is systematically restricting all sources of information, particularly those pertaining to the security forces.<sup>2</sup> This is a matter for serious concern in that it deprives the public of the information it ought to have in order to assess the state of affairs in the country and the activities of the security forces" (Hansson, 1988:495).

Thus, although the SAP themselves routinely recorded data with respect to shots fired by officers, complaints made against police, and deaths and injuries caused by police, this valuable information was rendered inaccessible to civilians.<sup>3</sup> In stark contrast, the SAP regularly made information on the use of force *against* the police available.

Alternate data sources on the use of force by the SAP were extremely limited, both in quantity and quality. Whilst some relevant statistics were published in annual reports of the Commissioner of Police, many of these figures were of questionable reliability and could not be used to track temporal trends as the variables and the time periods for which data were provided were frequently changed.<sup>4</sup> Although questions posed to parliament yielded some interesting information about the SAP, the usefulness of these data were limited: firstly by the

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2 The Nationalist government's term for the combined forces of the police and the military.

3 The SAP Standing Orders required the collection of shots-fired data.

4 The number of police killings and woundings reported by the SAP was consistently lower than those recorded by civil monitoring groups, see Howe (1989).

inconsistency of the questions that were posed and secondly by the increasing regularity with which the Minister refused to answer many of these questions on the grounds that this was not in the public interest (Hansson, 1988).

At this time, public health information was one of the few accessible sources of data on the police use of force in South Africa. For many years the Central Statistical Service (CSS) had collated and published annual, national mortality statistics on deaths resulting from firearm accidents, suicides and homicides.<sup>5</sup> Unfortunately, however, these figures did not show the relative numbers of police and civilian victims and excluded information on perpetrators. Nevertheless, national mortality statistics were compiled from information recorded in the death registers of local state mortuaries nationwide, and these records *did* include data on victims and alleged perpetrators. Furthermore, the death registers contained an unusually complete sample of fatal shootings because the law required that an autopsy be performed at a state mortuary in all cases in which death was not due to natural causes (The Inquest Act 58 of 1959 as amended). Regrettably, however, death registers were relatively inaccessible to independent researchers as the SAP managed state mortuaries and hence controlled access. But after autopsy, every firearm death had to be examined by an inquest or a criminal court,<sup>6</sup> and because these documents were deemed to be public records, they constituted one of the few accessible sources of relevant information for firearms research. Notably though, few researchers utilised court records in the investigation of gun-related issues. It seems that most considered it non-viable to wade through scores of inquests and criminal cases pertaining to other issues in order to extract a meaningful sample of shootings.

In addition to the lack of access to basic data on the SAP, there was little impetus for research on the police use of deadly force. Unlike various US administrations, the Nationalist government -- formally in power from 1948 to mid-1994 -- did not prioritise the use of guns by the SAP as a problem requiring attention. Furthermore, public concern was focused on SAP brutality and misconduct in general rather than specifically on gun use. It should not be surprising therefore that funding for research in this field was limited and that empirical investigations on firearm use by the SAP were scarce. Even by the mid-nineties there were only a handful of studies on the use of deadly force by police in South Africa; nothing like the vast field of research characteristic of North America.<sup>7</sup> Indeed, "[u]ntil recently the institution of the SAP has remained somewhat obscured from the inquiring thrust of academia" (Van Der Spuy, 1990:85).

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5 See Chapter Three.

6 And both in rare instances.

7 But work on the police in South Africa has increased substantially since 1990.

## A QUANTITATIVE PICTURE

### Introductory Comment

Reliable, longitudinal national statistics on the frequency with which the SAP fired shots and used force in general were not available to independent researchers and information on the *averted* use of force by the SAP was non-existent. Nevertheless, over the years some figures were published on the use of force by and against police. Considering the overall paucity of information in this field, these somewhat fragmented data have been collated to provide an admittedly crude quantitative picture. As the reliability of these data have not been established, the propositions made here should be treated as tentative hypotheses.<sup>8</sup>

### Composition of the SAP

Table 5.1 shows the size of the permanent police force in South Africa since 1983, as officially reported by the Commissioner of Police. The rates indicate a substantial increase in the size of the police force relative to the background population since the early eighties: from two police in every 1000 people in 1983 to three by 1989. Despite this growth, in 1991 the ratio of police to civilians in this country was still only half that of most Western European countries (Jeffery, 1991).

**Table 5.1:**  
**Official Size of SAP.**

Years	Totals	Rates per 1000 <sup>9</sup>
1983	42740	2
1984	44696	2
1985	45559	2
1986	48921	2
1987	60390	2
1988	60878	2
1989	81582	3
1990	90945	3
1991	96947	3
1992	113380	4
1993	111482	3
1994	NA	NA
1995	140000	3

*Sources:* The Commissioner of the SAP (1990 to 1985), Hansard (21 March 1990, 19 February 1991, 17 February 1992, 16 March 1993), Van Wyk (1995) and population data in The CSS (1994[i]).

- 8 Where feasible raw frequencies were converted into rates to enhance relevance and comparability. Figures have been consistently rounded to the nearest whole number or when applicable to the first decimal place.
- 9 Of the background population.



From 1947 onwards the SAP was consistently deemed understaffed and over the years many efforts were made to increase the effective size of the force (Van Der Spuy, 1990, 1988). For instance, in 1961 a civilian unit known as the Reserve Police was established to assist the SAP in conducting routine activities (Dippenaar, 1988). In 1973 the Police Reserve -- comprising ex-police officers -- was introduced to supplement SAP personnel (The Commissioner of the SAP, 1991). The SAP also included those who elected to do their compulsory national service within the police force; the South African Railway Police (SARP) which operated until 1986; and the Municipal Police and Special Constables, black officers introduced from the mid-eighties to assist in policing African areas (The Commissioner of the SAP, 1991).

In composition the SAP was dominated by males and whites. It was not until 1972 that women were permitted to join the force (Van Der Spuy, 1990). The proportion of female officers was never substantial and women police were generally limited to office-based positions (Rauch, 1994). Between 1983 and 1990 whites constituted about 51% of the police force (The South African Institute of Race Relations (SAIRR), 1991 to 1985). Notably, whites remained grossly over-represented within the SAP even after large numbers of black officers were employed in the mid-eighties (Hansard, 20 May 1991, 29 June 1988).<sup>10</sup> Police management was also kept in white hands and black officers tended to remain in positions of lower status and authority (Van Wyk, 1995).

### **Violence against Police**

The SAP routinely collected and published data on violence perpetrated *against* the police. National figures for police deaths in the line-of-duty were made available annually in the reports of the Commissioner of Police, and a selection of these statistics have been presented in Table 5.2, showing that between 1990 and 1993 the rate at which on-duty police were killed trebled. From the mid-eighties police managers expressed concern about heightened violence against police which they attributed to the ANC's campaign to undermine the SAP. It is now widely acknowledged that the SAP were viewed as defenders of the hated Apartheid regime and were treated as political targets by the Anti-Apartheid Movement (e.g. Jeffery, 1991). In 1993 the SAP Commissioner released detailed figures that showed an alarming increase in the number of police homicides: more SAP were killed between 1991 and 1992 than in the 18 years from 1973 to 1990 (The Commissioner of the SAP, 1993:58). Two other worrying tendencies also emerged during the nineties: an increase in the proportion of police who were killed with AK-47 rifles,<sup>11</sup> and in the percentage who were shot in the head.<sup>12</sup>

10 As Municipal Police and Special Constables.

11 From 17% in 1991 to 43% in 1992, see The Commissioner of the SAP (1993).

12 A 38% increase from 1993 to 1994, see Hansard (10 May 1995).

Although details of the number, types and outcomes of assaults on the SAP were not published consistently, the available data indicate that the risk of homicidal death among police increased markedly during the nineties. Indeed the rate of on-duty police deaths in South Africa was substantially higher than the rate in the USA: 158 and 26 per 100000 officers in 1991 resp. (Keller in: the New York Times, 28 June 1992).

Regrettably, the SAP published little information on unintentional deaths and injuries among police, particularly those resulting from guns. But data on the frequency of police suicides were made available. Notably, there was a 33% increase in the SAP suicide rate between 1991 and 1992,<sup>13</sup> and the following year the Commissioner drew specific attention to this issue, stating that:

"[w]hen the suicide statistics of the South African Police are examined, they are cause for concern and demand speedy action. As early as 1989, it appeared that the South African Police suicide rate compared with that of the general public, was exceedingly high. ... It is for this reason that Psychological Support Services are at present very deeply involved with pro-active as well as reactive steps to address suicide and stress among members of the Force" (The Commissioner of the SAP, 1993:27).

At this time, the suicide rate for the SAP was considerably higher than the rate for the North American police: 83 and 17 per 100000 officers in 1992 resp. (Geller & Scott, 1992:234).

**Table 5.2:**  
**SAP Killed in the Line-of-Duty.**

Years	Totals	Deaths per 1000 SAP
1984	48	1
1985	39	1
1986	68	1
1987	67	1
1988	80	1
1989	71	1
1990	107	1
1991	137	2
1992	175	2
1993	279	3

*Sources:* The Commissioner of the SAP (1993 to 1984), Cilliers and Van Zyl Smit (1995) and Table 5.1.

<sup>13</sup> From 60 to 80 per 100000 officers, see The Commissioner of the SAP (1993).

### Deaths and Injuries by SAP

The data in Table 5.3 pertain to the period *before* the civil war which began in late 1984 (Howe, 1989). According to these figures the average rate of killing by the SAP doubled between the early and the late seventies, and then remained relatively constant into the mid-eighties. Furthermore, "the annual rate of deaths due to police action increased at a greater rate than either the population or the police force" over this period (Foster & Luyt, 1986:304).

**Table 5.3:**  
**Civilians Killed by SAP before the Civil War.**

Periods	Averages	Killings per 100000
1970-1974	84	0.4
1975-1979	170	1
1980-1984	210	1

*Sources:* Foster and Luyt (1986) and population data in The CSS (1994[i]).

Table 5.4 shows that the rate of killing and injuring by the SAP rose sharply from 1983 to 1985, reached a peak during the intense political conflict of 1985 and 1986, and then returned to the average pre-war rate in 1987. However, unlike the death rate which dropped and remained relatively low, the injury rate sky-rocketed in 1990 and exceeded the 1985 level.

**Table 5.4:**  
**Deaths and Injuries by SAP.**

Years	Killings	Killings per 100000	Killings per 100000 SAP	Injuries	Injuries per 100000
1983	211	1	NA	368	1
1984	287	1	640	937	4
1985	798	3	1750	2571	9
1986	716	3	1460	2088	8
1987	400	1	660	623	2
1990	270	1	300	2892	10

*Sources:* Foster and Luyt (1986), The SAIRR (1985); Hansard (24 March 1988), Jeffery (1991), and population data in The CSS (1994[i]) and Table 5.1.

The elevated rates of killing and injuring by the SAP were commonly explained as a response to increased civilian violence (e.g. Jeffery, 1991; The Commissioner of the SAP, 1991 to 1985). However, *before* the nationwide outbreak of political conflict, the SAP rate of killing was already double that of the North American police and seven times higher than the Canadian police (Foster & Luyt, 1986:302). Indeed it has been argued that the use of excessive force was an SAP tradition (e.g. Van Der Spuy 1990; Haysom. 1987[a]).

**Table 5.5:**  
**Deaths in Political Conflict.**

Years	Killings by Civs.	Killings per 100000	Killings by SAP	Killings per 100000 SAP
1985	610	2	240	530
1986	406	2	191	390
1990	2352	10	323	360
1991	3056	10	92	90
1992	3434	10	161	140
1993	4243	10	121	110

*Sources:* Hansard (25 April 1986, 4 June 1987), The Human Rights Commission (1993 to 1991), and population data in The CSS (1994[i]) and Table 5.1.

The number of people who were killed by the SAP during political conflict comprised only about a third of the total who were killed by the police at this time (see Tables 5.4 & 5.5). A comparison between total rates of killing by the SAP (Table 5.4) and those during political conflict (Tables 5.5 & 5.6) reveal a similar pattern, that is, a peak during 1985 and 1986 and a decline during the early nineties. Interestingly, civilian rates of killing were comparatively low during the crisis civil war years and increased markedly during the transition phase of the nineties. This is opposite to the pattern that characterised killings by the SAP.

Overall, the quantitative data presented thus far suggests that, prior to the civil war, the SAP used relatively high levels of force in policing and this tendency was exacerbated during the conflict. In other words, a heightened use of force seems to have permeated SAP practice (Hansson, 1990[a], 1989; Foster & Luyt, 1986). But because the bulk of scholarly and public attention in this country was directed at SAP conduct in political conflict, the police use of force in general law enforcement was somewhat neglected (Hansson, 1990[a]).

**Table 5.6:**  
**Deaths and Injuries by SAP in Political Conflict.**

Years	Killings	Killings per 100000	Injuries	Injuries per 100000
1985	240	90	NA	NA
1986	191	70	NA	NA
1990	323	110	3390	1110
1991	92	30	607	190
1992	161	50	1716	540
1993	121	40	2219	680

*Sources:* Hansard (27 February 1986, 24 June 1987), The Human Rights Commission (1993-1991), and population data in The CSS (1994[i]) and Table 5.1.

However, the shortcomings of these statistics must be borne in mind: not only are they of uncertain reliability, relevant figures for crucial time periods are missing and separate counts are not available for unintentional and intentional killings, unlawful and justifiable deaths, and shootings as opposed to killings by alternate methods. Nevertheless, other kinds of information on police misconduct also support the notion that excessive force was common within the SAP (see Tables 5.7 & 5.8).

**Table 5.7:**  
**SAP Convictions for Violent Offences.**

Years	Convictions for Violence	Rates per 1000 SAP	Averages
1970	230	7	
1971	214	8	
1972	205	8	
1973	183	7	
1974	206	8	8
1975	193	7	
1976	236	9	
1977	250	10	
1978	263	10	
1979	229	9	9
1982	245	7	
1983	246	7	
1984	251	7	
1985	282	8	7
1989	546	7	
1990	418	5	6

*Sources:* Foster and Luyt (1986), Hansard (7 May 1991, 22 March 1991) and Table 5.1.

Table 5.7 shows that the average rate at which members of the SAP were convicted for violent offences decreased from the seventies to the eighties, despite the higher rate at which police killed and injured civilians from 1985 onwards. Since it has been demonstrated that only a negligible proportion of complaints against the SAP resulted in criminal prosecutions, police convictions for excessive force must be viewed as the tip of the iceberg and, hence, indicative of a relatively high incidence of excessive force usage among the SAP (e.g. Weitzer & Repetti, 1991; Hansson, 1990[a], 1989; Foster & Luyt, 1986). According to Foster and Luyt the conviction statistics for the SAP "paint a grim picture of police violence in the ordinary business of policing criminal activities" (1986:305).

**Table 5.8:**  
**Damages and Settlements due to Inappropriate Use of Force by SAP.**

Years	Amounts in Rands	Averages
1969	5845	
1970	990	
1971	10500	5778
1972	23076	
1973	2505	
1974	21973	15851
1975	30888	
1976	33667	
1977	87184	50580
1978	178725	
1979	252626	
1980	201193	210848
1981	409503	
1982	418914	
1983	4492234	1773550
1984	451120	
1985	1124974	
1986	1209780	928625
1991	954515	
1992	1129975	1042245

*Sources:* Foster and Luyt (1986), The SAIRR (1988), The Minister of Law and Order in: The Sunday Tribune (29 March 1987), and Hansard (26 February 1992, 16 March 1993).

Damages and out-of-court settlements paid out by the Minister due to inappropriate use of force by police also indicate the extent to which the SAP used excessive force. In fact, during the years of political conflict it became commonplace for civil claims against the SAP to be settled out of court, so as to avoid the additional cost and

negative publicity associated with litigation, and these payments were treated as routine costs of policing (e.g. Weitzer & Repetti, 1991). According to Table 5.8 the average amounts paid out on behalf of the SAP (due to inappropriate use of force) increased substantially between the late sixties and the early nineties.<sup>14</sup> To conclude, the available information is supportive of the postulate that the SAP tended to use excessive force in dealing with political conflict and in general law enforcement.

### **OTHER EVIDENCE OF EXCESSIVE FORCE BY SAP**

Importantly, evidence for the former proposition is not limited to the somewhat indirect statistics cited in the previous section. Over time a number of empirical studies have demonstrated that SAP practice was characterised by excessive force and a generalised lack of restraint. In general the Nationalist government's response to allegations of extreme misconduct on the part of the SAP was denial, usually accompanied by the rationale that such claims were attempts by the Anti-Apartheid Movement to discredit the SAP and the State (Van Der Spuy, 1990).

In 1985 a pioneering investigation by Foster and Sandler revealed convincing evidence that political detainees were routinely tortured by the SAP.<sup>15</sup> This conclusion was based on a wealth of information drawn from in-depth interviews with ex-detainees, medical documentation, and records kept by CBOs and NGOs that monitored the political conflict. In 1986 Foster and Luyt published a ground breaking article in which they concluded that the excessive use of force was not only prevalent, but also condoned within the SAP. In support of their claim the authors critically analysed a number of court cases involving allegations of torture by the SAP, and presented a range of statistics on killings and injuries caused by the police, convictions for violence, and legal settlements. Their conclusion was:

"[in] general the record of police conduct over recent decades in South Africa has been abysmal. There is no denying the numerous deaths in detention, evidence of torture and abuses, and many instances of indiscriminate shootings. ... The death toll attributed to security force action makes for chilling reading. The image of the police both in the townships and the international arena is -- with considerable justification -- quite appalling (in: *The Cape Times*, 1 August 1987).

This work was followed in 1991 by another important piece of research which demonstrated that the SAP routinely used torture techniques in the interrogation of suspects arrested in connection with non-political offences (Fernandez, 1991).<sup>16</sup>

Since mid-1994 the new government has made concerted efforts to clean up all state departments and particularly the police force. The process has uncovered

14 The average for 1981 to 1983 was inflated by one unusually large amount.

15 Subsequently published as a book, see Davis *et al* (1987).

16 And in late 1996 "torture was still being widely used by specialist police teams as part of normal investigative procedure", see *The Weekly Mail and Guardian* - Internet (18 October 1996).

indisputable evidence of widespread abuses of power by the SAP, including the existence of death squads within the force. This came to light in the trial of Eugene De Kock, an SAP colonel who was charged with 121 counts of murder, fraud and unlawful possession of firearms and ammunition. Significantly, the testimony in this case has been cast as:

"... the single most important collection of material about human rights violations committed by members of the security forces during the 1980s and early 1990s" (The Mail & Guardian, 26 Jan to 1 Feb 1996:5).

It has now been established, beyond a reasonable doubt, that specialised covert units of the SAP carried out planned assassinations of political opponents, and that a clandestine alliance existed between the Apartheid State and the IFP which was aimed at destabilising the growing political power of the ANC. It was revealed in the De Kock case that covert SAP units supplied the IFP with illicit weapons of war and trained their paramilitary units (The Mail & Guardian, 26 Jan to 1 Feb 1996).

SAP practice was not only characterised by extreme abuses of power, like torture and assassination. A number of studies published in the late eighties showed that brutality by the SAP was a generalised phenomenon at this time. A book published by the Catholic Institute for International Relations (CIIR) in 1987 is of particular note as it provides comprehensive coverage of the violent policing practices that were employed in African areas. More specifically this work highlighted the role played by the Special Constables and Municipal Police: African officers who were deployed to police African areas, especially those considered perilous for whites. Armed Municipal Police, known by the derogatory name of greenflies, were introduced mainly to guard local authorities and to protect community councillors, the officials elected to these bodies (The Black Sash, 1988). This form of local government was introduced in African areas in 1983 as part of the Nationalist government's process of constitutional reform.<sup>17</sup> Under this system:

"... [A]fricans were represented on Black Local Authorities (BLAs) only, the lowest level of government. ... Coloureds and Asians were granted representation at all three levels of government, although at the central level this was still not equal to that enjoyed by whites, the ratio being four whites, to two coloureds to one Asian " (Hansson, 1990[h]:38-9).

Black Local Authorities were violently rejected by the majority of the African population, and the property and councillors involved in these structures became targets for Anti-Apartheid protest. In fact by March 1985 only three of the original 34 local authorities were still functioning (The Rand Daily Mail, 16 March 1985). In this context it is not surprising that an adversarial relationship developed between Municipal Police and African residents, and there is substantial evidence of routine

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17 See Hansson (1990[h]) on State strategy.



brutality by these officers (e.g. Fine & Hansson 1990; Hansson & Fine, 1990; *The Black Sash*, 1988).

Together the work of the CIIR (1987), Fine (1989) and Fine and Hansson (1990), provide an in-depth view of the way in which the Special Constables operated, particularly with regard to the unnecessary and excessive use of force. These officers, popularly known as instant constables, were afforded an extremely truncated training, armed with shotguns and sent into African residential areas to deal with violent political conflict. By the time the Special Constables were deployed, animosity toward the SAP was widespread within African townships. "Serious abuses of power by kitskonstabels [instant constables] occurred in many areas from the first weeks of their deployment [in late 1986], ranging from fatal shootings, arbitrary assaults, and sexual abuse, to verbal abuse and harassment" (Fine, 1989:58). What followed was a spiral of police brutality and violent attacks on Special Constables, who rapidly became symbols of the hated Apartheid regime (e.g. Fine, 1989). There were many reports of Special Constables being murdered by the so-called necklacing method in which a rubber tyre was placed around the arms and trunk of a bound victim, who was then doused in petrol and ignited (e.g. Knobel, 1986). Indeed, so intense was the threat to Special Constables in some areas, they were forced to live in barbed-wire enclosed barracks. In a period of less than three years, between February 1987 and August 1989, this 5000 strong group of police officers killed 49 African residents and was served with five Supreme Court interdicts restraining them from unlawful conduct (Hansard, 29 April 1989:6383; Fine, 1989 resp).

Because the civil war was characterised by widespread and frequent public protests, it is understandable that much of the work on policing during this period, pertained to the SAPs public order activities (Hansson, 1990[a]). The Nationalist government "extensively eroded" the right to gather, and effectively outlawed public gathering as a means of political protest against the Apartheid State (Haysom, 1987[a]:23). From 1976 onwards all outdoor gatherings, except sporting and religious meetings, were prohibited, and by 1982, a range of indoor gatherings had also been banned (Government Notice, 27 March 1986; *The Internal Security Act 74 of 1982* resp). Whilst it was technically feasible to obtain special magisterial permission to hold such gatherings, this discretion was applied in an inequitable manner against the Anti-Apartheid Movement and illegal gatherings were selectively policed (e.g. *The Kannemeyer Commission*, 1985).

Much of what is known about the SAPs crowd dispersal practices during this period, emerged in evidence led before commissions of inquiry that were held in the wake of controversial incidents. The Kannemeyer Commission, which investigated the Uitenhage case in March 1985, is of particular note because it was the first inquiry into the conduct of the riot police during the civil war that negatively

criticised the action taken by the SAP in crowd dispersal. The incident involved a group of African mourners who were marching from Langa to KwaNobuhle in the Eastern Cape to attend a funeral for which magisterial permission had been denied. Although the evidence was extremely contradictory, the Commission accepted that the SAP, who were present in armoured vehicles, had fired SSG shot into the approaching crowd because one of the participants had attempted to throw a petrol-bomb at the police (The Kannemeyer Commission, 1985). As a result 20 people were killed and 27 others were seriously injured by the police. The commanding officer claimed that a warning shot had been fired but this seemed unlikely and, even if such a warning had been given, it would have been of little benefit as the crowd was not afforded sufficient time to comply (Haysom, 1987[a]:4). The pivotal issue raised by this inquiry was why the police had not used less-than-lethal methods to disperse the crowd before they resorted to deadly force. The Commission found that the riot police had been *ordered* not to carry less-than-lethal weapons on this occasion, and had been armed with only shotguns and heavy-calibre SSG buckshot (that spreads one in every thirty metres and is capable of penetrating a sheet of heavy metal at seven paces). This was described as "cause for grave concern" and the SAP approach to crowd dispersal in which the stated objective was to "eliminate suspects" rather to disband illegal gatherings was deemed "disturbing" (The Kannemeyer Commission, 1985:164-5, 95, 108-112 resp.). The Commissioner commented further that:

"... surely when one has to deal with a large mob of rioters, the aim should be to cause the crowd to disperse and not to render the members thereof incapable by shooting them with ammunition such as SSG" (The Kannemeyer Commission, 1985:112).

By comparison, the conclusion reached on the question of why most of the victims had been shot in the back or side, was strikingly less trenchant. Although this evidence seemed to indicate clearly that the police had continued to shoot at people who were attempting to disperse, the Commissioner found that those who were struck posteriorly or laterally, must have been shot in the time that it took for the commanding officer to realise that the crowd was fleeing and to call for a cease fire! This is simply unacceptable:

"[a]s with the Sharpeville inquiry, this does not explain how well-armed men could discharge volleys of lethal buckshot into the backs of an unarmed crowd of men, women and children while awaiting an order to cease fire" (Haysom, 1987[a]:26).

Despite the public criticism levelled at the SAP by this Commission, and assurances from the police that their crowd control methods had been re-evaluated, less than four months later the riot police opened fire on a group of elderly women at

Mamelodi outside Pretoria (The Weekly Mail, 29 November 1985). Indeed this was a pattern that persisted until at least 1991, and Table 5.9 reflects the toll of deaths and injuries attributed to the riot SAP in a selection of crowd dispersal incidents.

**Table 5.9:**  
**Deaths and Injuries by SA Riot Police in Selected Incidents.**

Years	Incidents	Killings	Injuries
1985	Uitenhage	20	23
1990	Sebokeng	5	161
1990	Johannesburg <sup>18</sup>	2	10
1991	Daveyton	12	27
1991	Ventersdorp	3	42

*Source:* Jeffery (1991).

Although numerous authors have addressed the topic of SAP conduct in relation to political protest, Haysom (1987[a]) and Jeffery (1991) provided two of the most systematic, empirically-based investigations of the use of force by the police in crowd dispersal during the civil war. Haysom critically evaluated the way in which the SAP handled a sample of political protests that occurred between 1985 and 1986,<sup>19</sup> and concluded that:

"[i]n the execution of their duties South African police use firearms and inflict deadly force too readily and in unacceptable circumstances. ... The unnecessary or reckless use of firearms by the police -- is not the result of 'rogue policemen' or reckless individuals. It is a widespread systematic use of lethal and violent weapons principally on South Africa's black citizens" (1987[a]:3 & 27).

The author also maintained that the SAP had a shoot-to-kill policy in dealing with political protest and used maximum rather than minimum force. A notorious example of this practice was the so-called Trojan Horse incident, which occurred in a suburb of Cape Town in 1985.<sup>20</sup> In this case police were concealed in containers on the back of a lorry which was then driven through an area where people had been stoning passing vehicles. As soon as stones were thrown at the lorry, the officers started shooting. As a result four people were killed, including the occupant of a nearby house. Although these killings amounted to murder, they were deemed

18 The CAST March.

19 Reported in the Human Rights Index of the South African Journal on Human Rights.

20 See Steytler (1987[a]) and the South African Journal on Human Rights (1984 to 1986).

justifiable in terms of the emergency regulations (Haysom, 1987[a]; Steytler, 1987[a]).

Overall, Haysom highlighted the following as evidence of the reckless use of lethal force by the SAP in dealing with political protest: (1) the high proportion of children and youths who were shot; (2) the frequency with which bystanders were shot; (3) the fact that the majority of people shot during crowd dispersal were struck in the back or side (which indicates that they were probably in the process of dispersing); and (4) the large number of youths killed by police solely on the grounds of *suspected* stone-throwing (1987[a]). Although this work was an important contribution to the field at a time when scholarly research on the use of force by the SAP was scarce, the study was methodologically flawed by the use of a non-representative sample that was skewed in favour of problematic cases: it comprised only cases that had been reported *because* they involved human rights violations. Whilst these data provide support for the claim that the SAP used excessive force in a relatively large number of crowd dispersal incidents, the findings do not constitute conclusive evidence of the *systematic* use of excessive force by police in crowd dispersal. Hence, this research does not enable a convincing rejection of the counter-claim that the overwhelming majority of illegal gatherings were dispersed by the SAP "without substantial death or injury to protesters" (Jeffery, 1991:2).

Jeffery's investigation was largely a response to the introduction of a Set of Requirements and Code of Conduct for the SAP under the 1991 National Peace Accord. The main objective was to assess the accuracy of the prevailing perception that the SAP were playing "a major role in promoting violence" (1991:9). Unfortunately, the evaluation was neither balanced nor sufficiently critical. Instead, it was a rather conservative analysis of claims and counter-claims with respect to the use of excessive force by the riot police, derived from interviews, press reports and reported statistics. Only cursory attention was paid to findings from academic research and human rights monitoring groups, and the overwhelming evidence of SAP abuses of power that has emerged since 1994 certainly underscores the limitations of Jeffery's inquiry (1991). Nevertheless, the work was important because it was one of the few broad overviews of issues pertaining to the riot police at this time. The factors noted as indicative of excessive SAP force are of particular relevance to this discussion: (1) claims by legal scholars that the SAP had "a deliberate policy of using maximum force to suppress dissent"; (2) the finding that the "mere presence of the police at gatherings increase[d] the subsequent rate of collective action by 68% and that any use of fire-power by the police increase[d] it by 107%"; (3) 1350 SAP resignations in early 1990 in protest against brutality in the force; (4) the unacceptably high number of deaths and injuries caused by the SAP; (5) a prevalence of criminal convictions among police; and (6) the large amounts of

compensation paid out for damages, injuries and deaths caused by the riot police (Jeffery, 1991:2). However, the author concluded that excessive force by police during crowd dispersal was *not* typical and that the SAP dispersed the majority of illegal gatherings without undue loss of life or injury. She claimed furthermore, that the SAP were specifically trained to uphold the principles of incremental use and minimum force during riot control, and to use deadly weapons only in self defence. Although conceding that the police had over-reacted on occasion, Jeffery maintained that much of the criticism levelled at the SAP had been unjustified (1991).

In a recent investigation of police conduct in South Africa between 1990 and 1995, the following conclusion was reached:

"... since the country's first democratic election ... the police have made few attempts to curtail the serious human rights violations within their own ranks. Indeed, to date, there has been no admission from the police that there is a real or possible problem, in this regard. However, cases and allegations of torture, assaults and unlawful shootings continue to remain features of policing under the new dispensation. ... Human rights violations are a systemic and nationwide problem within the police" (The Network of Independent Monitors *et al*, 1995:Preface).

This work highlighted extrajudicial executions and unlawful shootings by police,<sup>21</sup> and the incidence of deaths in custody resulting from police brutality,<sup>22</sup> as evidence of the ongoing use of excessive force by police in this country. Although important, these findings must be considered with caution because the sample comprised *allegations* of human rights violations by the police in only three of the country's nine provinces.<sup>23</sup> Nevertheless the evidence is weighty and consistent with previous claims. To conclude: the accumulated data seem to indicate that it was common practice for the SAP to use excessive force and to employ force without due restraint.

## RESEARCH FINDINGS FOR CAPE TOWN

Thus far an attempt has been made to paint a national picture of the use of force by and against police in the South African context. Because the research conducted for this dissertation comprised an investigation of fatal shootings in metropolitan Cape Town, relevant findings from research on this urban area have been included.

In mid-1986 the first empirical study to address firearm deaths in Cape Town was published by the then Chief Forensic Pathologist for this area (Knobel, 1986). The work was based on a complete sample of gun fatalities drawn from the death registers. The analysis focused on the impact of political conflict and demonstrated a

21 First reported by the Natal Investigation Unit to the Goldstone Commission in 1993.

22 Dramatically brought to public attention when a forensic pathologist released information to the press in July 1992.

23 Gauteng, KwaZulu-Natal and the Western Cape.

sharp rise in the frequency of non-natural deaths, particularly homicides, in this city during 1985.<sup>24</sup> More specifically, the results showed that the bulk (78%) of the fatal shootings in this area were homicides and that the SAP were responsible for the vast majority (70%) of these killings, most (74%) of which were perpetrated during political conflict (Knobel, 1986:84). This author noted further that: (1) the mobile nature of the crowds being dispersed resulted in many people being shot in the back; (2) numerous people sustained multiple wounds because the SAP fired volleys of non-live ammunition into crowds; and (3) the fatality rate was elevated by the police firing birdshot at close-range and by the absence of prompt medical treatment. In concluding, Knobel emphasised that birdshot and auto-repeat rifles were contra-indicated for crowd dispersal and proposed that the SAP use less-lethal methods for riot control (1986).

Duflou (1986), also a Cape Town forensic pathologist, published a companion article in the same journal. This work comprised an in-depth analysis of Knobel's (1986) sample of police firearm homicide cases. It is disturbing to note, however, that there is a significant discrepancy between the number of fatal shootings reported by these two authors: according to Knobel there were 112 police gun homicides in Cape Town during 1985, 83 of which were perpetrated during political conflict and 29 during general law enforcement (1986:84). By contrast, Duflou reported a total of 93 fatal police shootings, 87 in response to political conflict and only six during general law enforcement (1986:88). Since neither author commented on this inconsistency it has remained unexplained. Despite this uncertainty, Duflou's (1986) investigation yielded a range of valuable descriptive data on gunshot victims and their injuries. More significantly, the following *differences* were revealed between fatal police shootings in political conflict and those perpetrated during general law enforcement:<sup>25</sup> (1) on average those killed in political conflict were younger than the victims of general law enforcement; (2) a higher percentage of children under 15 were killed during political conflict; (3) the majority of those killed in political conflict were African whereas most people killed in general law enforcement were coloured; (4) shotguns were more frequently used to kill in political conflict and handguns were more common weapons in general law enforcement; (5) a higher proportion of those killed during political conflict were shot more than once; and (6) a higher percentage of the victims who were shot during general law enforcement had alcohol in their bloodstreams. Interestingly, two similarities were also reported: the overwhelming majority of the victims were males and the bulk were shot in the back (Duflou, 1986). It is also noteworthy that over a third of the fatalities were caused by so-called *non-lethal* birdshot. Duflou (1986), like Knobel (1986), emphasised the need for rapid medical treatment in relation to gunshot injuries,

24 The first state of emergency was declared in the Western Cape on 26 October 1985.

25 Statistical significance was not established.

noting that most of those who were shot died from a combination of shock and blood loss.

In both studies fatal shootings by the SAP during the intense political violence in Cape Town in 1985 were examined. In 1989 another empirical investigation of police firearm homicides in this area was published, this time pertaining to the longer period 1984 to 1986 (Hansson, 1989).<sup>26</sup> This research was an advance on previous work. Not only was a larger sample employed, but the very basic data from death registers was supplemented with more detailed information from inquests and criminal trials. In addition, this was the first empirical examination of the question of *restraint* in the use of guns by police in a South African context: a test of Haysom's earlier claim that the SAP used firearms "to inflict deadly force too readily and in unacceptable circumstances" (1987[a]:3). Unfortunately, however, the sample used was admittedly incomplete; only 48% of the fatal shootings perpetrated by on-duty police were included. The sample may also have been systematically biased by the exclusion of arguably less severe Regional Magistrates' criminal cases. Nevertheless, this study yielded a range of interesting findings which should, of course, be considered with due caution considering the methodological shortcomings and the absence of significance tests. With respect to the more descriptive data, the following results from Hansson's (1989) analysis concurred with those of Duflou (1986): the majority of the victims were young adult African males, and shotguns were commonly used in these killings. By contrast, however, Hansson (1989) did *not* find that those killed during political conflict were younger, or that most of those killed in general law enforcement were coloured. In addition, this author showed that the police shooters were all males, predominantly white and most commonly constables.

"[But] [t]he most striking finding in this study is that the police used deadly force with a marked lack of restraint. For, irrespective of their purpose or situation, this sample of the SAP implemented disturbingly few of the internationally accepted controls when using firearms with deadly effect. Notably it was 'Blacks' who fell victim to fatal shootings by predominantly 'White' police officers" (Hansson, 1989:133).

These results indicated that in the majority of fatal shootings, police violated the principles of minimum force and proportionality. Whilst this lack of restraint in the lethal use of guns by the SAP was found to permeate police practice, officers were shown to have employed even less restraint in dealing with political conflict than in general law enforcement (Hansson, 1989). Perhaps even more alarming was the finding that, despite an extreme lack of restraint on the part of the SAP, the overwhelming majority of these firearm

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26 Hansson (1990[a]) included this police sample and a comparative civilian sample.

homicides were legally justified by inquest courts and none of the officers concerned were held criminally liable. Fatal shootings perpetrated during political conflict were most commonly justified in terms of the common law of private defence, but those that occurred during general law enforcement were sanctioned primarily under statutory law as arrests or the prevention of escapes (Hansson, 1989).

## **FACTORS CONTRIBUTING TO EXCESSIVE FORCE BY SAP**

### **SAP Subculture**

Occupational subculture has been most consistently named as a key factor in explaining the excessive use of force by the SAP, as well as other abuses of power. The nineties have seen subcultural explanations of police conduct modified by the concept of discourse. In short, discourses of police-work have been described as "ways of seeing" and associated "ways of doing" that are characteristic of police culture, but are neither "monolithic nor static" in nature (Rauch, 1991:4 & 3 resp). But it has been emphasised that so-called cop culture ought not to be treated as an insular phenomenon.

"For cop culture to be an adequate and useful analytical tool, it must also account for the norms created by, mediated through, and protected by, 'the law, formal organizational policy [and] senior officers'" (Steytler, 1990:107).

It has generally been acknowledged that the dominant norms and values of society are reflected within police subcultures (e.g. Reiner, 1985). It is thus crucial to understand SAP subculture within the sociopolitical and legal context in which it developed. The SAP was a racially and politically partisan force, the primary objective of which was to enforce and defend the system of Apartheid (e.g. Van Der Spuy, 1988; Steytler, 1987[h]; Sachs, 1975). After the Nationalist government came to power in 1948, "the State, government and police merged effortlessly into one ethnocentric universe"; that of the white Afrikaner (Van Der Spuy, 1990:92). Racism was inherent to the subculture of the SAP, and crime was politicised and political protest was criminalised under the Apartheid State (Rauch, 1991). The bulk of policing was public order policing of black people, rather than crime control as generally conceived: it was not criminals but black people whom the SAP viewed as the 'crime-problem' (Rauch, 1991).

It has been argued that militarism along with the political ideologies of Apartheid and Counter-Revolutionary Warfare, are the key to understanding the subculture of the SAP. Numerous authors have highlighted the militaristic nature of the subculture and structure of the SAP (e.g. Rauch, 1991; Steytler, 1990; Van Der Spuy, 1990, 1988). The origin of this militarism has been traced to the colonial Defence Act of 1912, which was subsequently incorporated into the Republic's



Police Act of 1958.<sup>27</sup> This legislation permitted the police force to be placed under military command and accorded the police additional powers and duties for the purpose of national defence (The Commissioner of the SAP, 1991[b]). The SAP was granted further extra-ordinary legal powers to maintain law and order under the Security Emergency Regulations of 1989, and militaristic ways of seeing and doing were consistently reinforced by:

"... emphasis on military discipline at training depots; the actual experience of soldiering, gained through the participation of the police in both World Wars, the confrontational thrust of public order policing during this century; and, from the seventies onwards, the shift toward extensive paramilitary training in riot control and counter-insurgency in response to armed insurgency and political resistance" (Van Der Spuy, 1990:87).

Throughout the eighties the SAP and the defence force worked hand-in-hand: the police were routinely assisted by the army in public order policing and many police officers were deployed to perform military duties, especially patrolling the borders. During the civil war, executive control of the SAP was effectively shifted from the Cabinet to the State Security Council which had a strong military leadership (e.g. Hansson, 1990[a]). An extreme lack of legal and civil accountability by the police is another noteworthy aspect of the militaristic ethos that dominated the SAP. This is clearly evident from factors such as: the police policy of extreme secrecy, the absence of independent mechanisms for the investigation of complaints against the police, their extra-ordinary legal powers, and their routine use of covert extra-legal methods (e.g. Van Der Spuy, 1990; Hansson, 1989; Omar, 1990; Steytler, 1987[a]; The Mail & Guardian, 26 Jan to 1 Feb 1996; Steytler, 1990 resp). In effect the SAP operated as a highly insular force, characterised by a zealous code of internal loyalty and a siege mentality, this being reinforced as the police were increasingly targeted (Van Der Spuy, 1990; Hansson, 1989).

Particularly from 1984 onwards SAP subculture was infused with the then dominant political discourse of the Nationalist State; political protest was cast as a third-world revolutionary attack and the State's response justified as counter revolutionary warfare (e.g. Hansson, 1990[b]; Seegers, 1988).<sup>28</sup> From this perspective it was war; black people were viewed as "the enemy" and it became the duty of the SAP to "stave off onslaught in any way possible" and specifically to "eliminate the enemy" (Hansson, 1989:119; S v Villet and Another, 1987 resp). The use of maximum force and a readiness to kill by police were corollaries of this ideology (e.g. Rauch, 1991; Haysom, 1990; Van Der Spuy, 1990; Hansson, 1989).

It is also important to note that SAP subculture was buttressed by the composition of the police force. Like the State in general, the SAP was dominated

27 See Dippennaar (1988) for a history of the SAP.

28 See Hansson (1990[b]) on counter-revolutionary strategy.

by white, male, Afrikaners who were generally supporters of right-wing politics (e.g. Jeffery, 1991).<sup>29</sup> Furthermore, the SAP was organised according to a military rank system, officers were clothed in military-style uniforms, armed increasingly with weapons of war like assault rifles and hand-grenades, and sent to patrol black townships in armoured vehicles.

The period of civil resistance and state repression in South Africa from 1984 has been cast as a war, given the extent of military dominance within the State and civil society (e.g. Cock & Nathan, 1989). Notably the SAP were at the frontline of this civil conflict (Rauch, 1991). However, the transition to democracy and the subsequent dismantling of Apartheid, formally initiated in February 1990, were accompanied by a striking turnabout in the State's political ideology: from counter-revolutionary warfare to non-violent political negotiation. Political protest was suddenly permissible and extra-parliamentary political organisations were unbanned. The overnight "demise of a coherent ideological framework" for the SAP had a disorienting effect on well-established ways of seeing and doing within the force (Rauch, 1991:19). The transition period since 1990 has been marked by widespread violence, mainly between political factions *within* civil society and not as previously, between the State and the Anti-Apartheid Movement. It has been argued convincingly that the old SAP subculture did not enable the police to deal effectively with new forms of social conflict and that:

"[t]he difficulties of redefining policing for the 'new South Africa', combined with rapid organizational reforms to the SAP necessitated by De Klerk's political initiative, [have] resulted in a certain level of inertia in relation to the policing of the violence" (Rauch, 1991:18).

Indeed, the SAP response was "ambiguous and incoherent"; characterised by deliberate inaction, police collusion with selected political groupings, and apparent impotence in the face of extreme violence (Rauch, 1991:18). In 1991, at the time of the National Peace Accord, the SAP were recognised as key contributors to the ongoing violence.

To conclude, SAP subcultural norms supportive of the use of excessive force did not exist in a vacuum (Steytler, 1990). These police ways of seeing and doing were shaped and reinforced by a combination of supportive processes including formal police policy, management practices, the law governing the use of force by police, and a police-friendly legal system. It has thus been postulated that the SAP was a "wholly unaccountable force, whose officers [were able] to abuse power with virtual impunity" (Weitzer & Repetti, 1991:1).

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29 From 1948 there was a deliberate policy of recruiting Afrikaners to the SAP and Afrikaans was adopted as the official language for police administration. By 1991 two-thirds of the SAP were supporters of extreme right-wing politics. See Jeffery (1991:4).

### SAP Regulations

The SAP Commissioner was empowered to issue orders and instructions pertaining to the police force:<sup>30</sup> when of a permanent nature these were termed Standing Orders and were binding on members of the SAP, although not carrying the weight of law. Hence, these orders were part of the context of rules in which police officers had to conduct themselves in general and, more specifically, when using force. For many years the SAP Standing Orders were *not* made public, but the 1986 version was revealed perchance as evidence in a court case. Notably, these regulations were in operation during much of the period that constitutes the focus of this research.<sup>31</sup>

The SAP formal policies on the use of deadly force were widely criticised (e.g. The Network of Independent Monitors *et al*, 1995; Jeffery, 1991; Hansson, 1990[a], 1989; Haysom, 1987[b]). Overall, the following key shortcomings were raised repeatedly: the policy was lenient and lacked specificity; restraint in the use of force and the principles of incremental use, minimum force and proportionality were not sufficiently emphasised; the policy was not adequately enforced; and was not open to public scrutiny. Haysom (1987[b]) noted that the SAP regulations were seriously lacking even when compared to the controversial deadly force policy of the security forces in Northern Ireland.

Gun use by the SAP was covered in section 202 of the Standing Orders (1986). The bulk of this section comprised a summary of the law pertaining to the legal use of firearms, prefaced by the rationale that police officers must have a thorough knowledge of the relevant law because they are "often required to act on their own initiative". Although the principles of minimum force and proportionality were mentioned, detailed guidelines on the use of deadly force were not provided, nor were examples of restraint and less-than-lethal means specified. Instead the principle of police *discretion* in gun use was promoted as follows: "... [i]t is impossible to make fixed rules with reference to all circumstances in which firearms may legally be used". Overall these regulations did not reflect the necessary balance between officer safety and restraint in the use of force by police. To the contrary, it was clearly stated from the outset that a police officer must be adequately armed in order to do his/her duty and that s/he must "not hesitate" to use his/her firearm, when seeking to protect life or even property.

It is offensive to note that the only additional precaution that was stressed in the SAP orders was plainly racially discriminatory and related to the issuing of firearms to African police. Commanding Officers were cautioned to: "... determine that the non-white [sic] member in question is reliable, has common sense and good

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30 Commanders could also issue orders if consistent with Standing Orders and legislation.

31 Until late 1991 when another set were published under the National Peace Accord.

judgement, can handle a firearm and is familiar with the circumstances in which [she] he may use it"; and to issue clear instructions for the return of weapons. No such precautions were specified for the issuing of guns to white police.

The remainder of these orders pertained to the administrative procedure to be followed whenever an officer fired a gun. More specifically, on every occasion that police fired a shot, whether intentionally or unintentionally, s/he was required to report the incident to a relevant senior officer so that a prompt and thorough investigation of the circumstances could be initiated. A comprehensive and factual report of the shooting had to be compiled and sent to the Divisional Commissioner of Police in charge of the officer concerned.<sup>32</sup> Such reports had to include the following basic information: the date, time, place and circumstances of the shooting; the officer's particulars; whether anyone had been killed or injured in the incident and their details; whether any property had been damaged by gunfire and the extent of the damage; the number of cartridges/shells issued to the police concerned and the number returned after the shooting; whether the officer/s had acted within the limits of section 49 of the Criminal Procedure Act (if applicable); whether a criminal case, judicial postmortem or departmental action was required; and whether the circumstances of the incident necessitated the suspension of the police involved. The Divisional Commissioner also had to send a copy of this report, with comments, to Head Office when anyone was killed or injured, when property was seriously damaged, when there was evidence of the illegal, reckless or negligent use of a firearm, or when the events provoked "exceptional public interest". If an officer was considered to have handled a firearm recklessly or negligently, to have fired without justification, or to have ordered such conduct, the Divisional Commissioner concerned was required to "give thorough consideration to whether or not a board of enquiry should be convened". Hence, on paper the investigation of police shootings appeared rigorous. But the process was internal to the SAP and shrouded in secrecy, so the actual efficacy of this mechanism could not be independently assessed. Neither were the outcomes of internal disciplinary inquiries into excessive force routinely made public (Weitzer & Repetti, 1991; Foster & Luyt, 1986).

A new SAP Code of Conduct was established under the 1991 National Peace Accord.<sup>33</sup> Unfortunately, this was not a significant improvement: most importantly the Code did not enhance the restraint required of police in using force and imposed few absolute obligations on the SAP (Jeffery, 1991). It was concluded that the requirements were not "designed to protect civilians from the excessive use of force by members of the SAP" (The Network of Independent Monitors *et al*, 1995:33). Rather predictably therefore, the laxity of these regulations has been highlighted as

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32 And sometimes the Divisional Commissioner of the area where the shooting occurred.

33 See Section G251. The Accord also included a Code of Conduct for Political Parties.

one of the key factors contributing to the ongoing use of excessive force by the police in recent years.

### **SAP Managerial Climate**

In view of the extreme secrecy which concealed the internal functioning of the SAP, it is not surprising to find that independent research was not conducted on police managerial practices in relation to the use of force. Certain indications have emerged, however, which suggest that the managerial climate within the SAP condoned and even actively encouraged the use of excessive force (e.g. Weitzer & Repetti, 1991; Foster & Luyt, 1986). Perhaps the most compelling evidence to this effect was the admission by senior officers that they ordered police in their command to "eliminate" suspects during political conflict (e.g. S v Villet and Another, 1987; The Kannemeyer Commission, 1985). In a similar vein, commanding officers have testified that on certain occasions they ordered their units *not* to carry less-than-lethal weapons for crowd control (e.g. The Kannemeyer Commission, 1985).<sup>34</sup> Furthermore, it was not routine practice within the SAP for officers facing serious criminal charges to be suspended from duty, or for those convicted of violent offences to be discharged (Weitzer & Repetti, 1991; Foster & Luyt, 1986). To the contrary: "[a] review of the case law demonstrates that officers who have ill-treated detainees have not only escaped punishment, but have been promoted in spite of their records" (Foster & Luyt, 1986:311). It thus seems that the excessive use of force by police was widely condoned by the leadership of the SAP, and even the Minister himself was "seen to approve boastfully of police brutality" (Foster & Luyt, 1986:311).

### **Lethality of SAP Weapons**

Whilst the use of certain kinds of firearms and ammunition by the SAP in public order policing was criticised, there was little contention over the types of weapons used in routine police-work.<sup>35</sup> Removing guns from the SAP was never seriously debated, nor was much effort invested in improving less-than-lethal weaponry and equipment for law enforcement. The SAP were generally armed with 9mm semi-automatic pistols and plastic batons, although the 0.38 inch revolver was not uncommon. The standard baton was 50cm in length and 30mm in diameter with a steel core, and officers were trained not to use batons above the neck (Jeffery, 1991). Special Constables were routinely equipped with 12-gauge shotguns and 2 to 3mm calibre birdshot. Such ammunition was fired in plastic cartridges each containing about 280 pellets, and the firing range was between 30 and 50m. This small calibre birdshot had almost no penetrative capacity when fired from more than

34 A number of police accused of murder were acquitted on the grounds of obedience to the orders of superior officers, see Hansson (1990[a]).

35 Except re the arming of Special Constables.

40m, unless it struck someone's eyes, but it was frequently lethal at close range especially at distances closer than 10m (The Kannemeyer Commission, 1985).

By contrast, a relatively wide range of weapons and equipment was made available for use by the riot police. It was also their stated policy that less-than-lethal weapons were routinely used to disperse gatherings and that lethal weapons were employed only to defend lives and prevent serious damage to property (Jeffery, 1991; The Kannemeyer Commission, 1985). But in practice lethal weapons were frequently used by the SAP in crowd situations. The police use, in riot control, of firearms designed for military combat was justified largely as a counter-measure to the alleged increase in illegal firearms among protestors, and the large size and violent nature of the crowds (Jeffery, 1991). According to the riot police, R1 and R5 assault rifles were employed by SAP sharpshooters to "take out" crowd members who were armed with explosives or firearms, so as to prevent the escalation of violence (Jeffery, 1991; Nathan & Phillips, 1991). The R1 assault rifle had optional automatic firing capacity and an effective firing range of 200m. It was used to fire 7.62 by 51mm sharp ammunition that could penetrate concrete and retained lethal capacity after passing through a human body. In fact the high risk to bystanders led to the R1 rifle being replaced with the R5 combat rifle and hyper-velocity ammunition. This firearm had optional automatic firing capacity, an effective firing range of 150m, and was used to fire smaller 5.56 by 45mm hyper-velocity sharp ammunition that was designed not to pass through flesh. Nevertheless a bullet-wound from an R1 or R5 rifle, even to the leg or arm, was usually fatal (The Winterveld Commission, 1986).<sup>36</sup>

The 12-gauge pump-action shotgun was standard police equipment for crowd control. This is a lethal weapon when used to fire heavy calibre pellets like buckshot (e.g. The Kannemeyer Commission, 1985). The riot police maintained that buckshot was only used in response to gunfire, the throwing of stones or petrol bombs (Jeffery, 1991). AAA and SSG buckshot were the two main types of buckshot generally employed in crowd dispersal (The Kannemeyer Commission, 1985).<sup>37</sup> AAA comprised 18.5 by 70mm cartridges each containing 44 5.16mm pellets, which had an effective firing range between 75 and 100m. The cartridge itself was potentially lethal when fired from closer than five metres and the pellets were likely to kill if fired from less than 25m (Jeffery, 1991). Larger calibre SSG comprised 18.5 by 70mm cartridges each containing 18 6.83mm pellets, with an effective firing range between 75 and 100m. The cartridge was potentially lethal when fired from closer than five metres and the pellets usually caused death when fired from less than 75m (Jeffery, 1991).

The SAP policy of using lethal weapons in response to crowd violence may

36 Although the light machine gun was available to SAP, it was allegedly used in crowd dispersal only once between 1984 and 1990, see Jeffery (1991).

37 The use of LG buckshot was unusual, see Hansson (1990[a]).

appear to have been reasonable under the circumstances. The problem was that the riot police treated the vast majority of gatherings as violent, so the use of lethal firearms and ammunition in crowd dispersal became routine. Some commanding officers even prevented their riot units from carrying less-than-lethal weapons, maintaining that these weapons were "... not sufficiently effective in 'immobilizing' trouble-makers" (Jeffery, 1991:126). The unacceptably high levels of death and severe injuries associated with the police use of SSG buckshot were brought to the fore during the Kannemeyer Commission of 1985, and the extreme lethality of assault rifles and sharp ammunition was emphasised during the Winterveld Commission of 1986.<sup>38</sup> Indeed, from the mid-eighties the lethal nature of the weapons commonly employed by the SAP in crowd dispersal was consistently named as a key aspect of the problem of excessive force (e.g. Jeffery, 1991; Hansson, 1990[a], 1989; Haysom, 1987[a], 1987[b]; The Winterveld Commission, 1986; The Kannemeyer Commission, 1985). It was generally argued that combat rifles and shotguns loaded with buckshot ought not to be used either in riot control or routine law enforcement.

Concerns over SAP weaponry were not limited to lethal weapons but extended to some of the so-called less-than-lethal weapons that were used in public order policing. Teargas, rubber bullets and birdshot were the principal less-than-lethal weapons employed by the riot police during the civil war (Jeffery, 1991).<sup>39</sup> Teargas was either sprayed from aerosol cannisters or fired from a weapon known as a stopper. When propelled by aerosol this substance was capable of affecting two to eight people within a range of five to 10m. However, when shot from a stopper as a 37mm gas round, the effective range was increased to 50m and the impact was expanded to between 10 and 20 people. Rubber bullets were either shot from a stopper or a shotgun. The 37mm rounds fired from a stopper had a range of about 50m, whilst the 18.5 by 70mm cartridges that were fired from a shotgun and contained two 12mm rubber bullets had an effective range of between 30 and 50m.

Evidence accumulated internationally has demonstrated that if used without the necessary caution, less-than-lethal weapons become lethal in effect; otherwise termed the "lethal use of non-lethal weapons" (Haysom, 1987[b]:216). To elaborate: teargas can be deadly if fired into enclosed spaces or otherwise used in high concentrations (e.g. The Standing Advisory Commission on Human Rights, 1984). Certain calibres of birdshot are likely to kill if they strike the upper body or head (e.g. Duflou, 1986; Hill & Peart, 1986).<sup>40</sup> Rubber and plastic bullets are usually lethal when fired at close range, particularly if they strike the head (e.g. Cohen,

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38 The Boputhatswana police killed 13 people while dispersing a crowd using combat rifles and 5.56mm live bullets, see The Winterveld Commission (1986).

39 Although they sometimes used other weapons like water canons and quirts.

40 Contrary to established opinion, see Spitz (1980) and Fatteh (1976).

1985). In 1973 rubber bullets were withdrawn from use by the security forces in Northern Ireland, due to unacceptably high rates of death and injury (Haysom, 1987[b]). Lighter plastic bullets were introduced that enabled better bullet placement. Nevertheless, plastic bullets proved to be just as dangerous as their rubber counter-parts and in 1982 the European Parliament voted in favour of banning the use of plastic bullets within the European Economic Community (The International Lawyers' Inquiry in Northern Ireland, 1985). But the SAP did not heed this warning and continued to use rubber bullets in riot control throughout the civil war.<sup>41</sup> Moreover, they did so without due caution and with highly damaging effects (Haysom, 1987[b]). For instance, it was common for the riot police to fire volleys of rubber bullets without aiming at suspects' lower bodies and to use teargas in enclosed spaces and against children and elderly people (Haysom, 1987[b]).<sup>42</sup> In addition, medical research showed that the SAP tended to fire birdshot at close range which resulted in numerous fatalities (e.g. Duflou, 1986; Hill & Peart, 1986). The Kannemeyer Commission exposed the high incidence of death and serious injury caused by the SAP use of ostensibly less-than-lethal weapons, a finding that was subsequently supported by a range of studies (e.g. Duflou, 1986; Hill & Peart, 1986; Cohen, 1985). Overall it may be concluded that the SAP used less-than-lethal weapons in a reckless and indiscriminate manner in public order policing (Haysom, 1987[b]).

Unlike the North American police, the SAP made little effort to assess the actual impact of the weapons they used or to expand the range and safety of less-than-lethal weapons and protective equipment for police-work. Indeed the baton appears to have been the only less-than-lethal weapon routinely available to the SAP for general law enforcement, and it seems that they did not regularly wear protective body armour (The Commissioner of the SAP, 1993; Jeffery, 1991).<sup>43</sup> Basic protective riot gear, like shields and helmets, were not widely used by the riot police in South Africa, who instead appeared to rely on the protection of armoured vehicles known as casspirs.<sup>44</sup>

To conclude: the evidence indicates an almost complete reliance on firearms for general law enforcement and public order policing, and a lack of restraint in the use of less-than-lethal weapons in crowd control. In addition, the SAP leadership seems to have paid too little attention to improving less-than-lethal weapons and protective gear in the service of violence reduction and enhanced officer safety.

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41 And to a lesser extent plastic bullets, see Haysom (1987[b]).

42 One of the most notorious examples of the misuse of tear gas by the SAP was at Ashley Kriel's funeral in Cape Town in 1987, see The Cape Times (20 July 1987).

43 Large quantities of protective body armour were only acquired by the SAP from 1993 and their policy on wearing was not made public.

44 The baton charge typical of riot control in most countries was not employed by the SAP. It was considered too dangerous given the low ratio of police to protesters and the high levels of violence, see Jeffery (1991).



### No Independent Oversight

Until late 1991 there was no external body for monitoring police conduct and investigating complaints against the SAP. Instead the SAP were policed by the SAP (Foster & Luyt, 1986). Under this system complaints had to be made to the police themselves and in general their response was negative, ranging from outright refusals to accept complaints to violent revenge (e.g. Fine & Hansson, 1990; Haysom, 1990). Numerous cases were documented of police intimidating, assaulting and killing people who dared to complain, but usually the SAP simply did not investigate complaints (e.g. Weitzer & Repetti, 1991). The alternatives -- written complaints to the Commissioner or Minister and/or questions in parliament -- tended to be no more effective than lodging complaints with the SAP themselves (Weitzer & Repetti, 1991). Not surprisingly these complaints mechanisms were not widely used by the public.

Additionally, police investigations of deaths and injuries caused by SAP were often of poor quality. There is evidence indicating that: crime scenes were inadequately managed which led to the destruction of evidence; officers failed to reconstruct scenarios in order to test the feasibility of statements; they omitted to test alleged shooters for residual gunpowder and have relevant ballistics tests conducted and; they made little effort to take statements from available material witnesses or to trace witnesses (The Network of Independent Monitors *et al*, 1995). In short, the SAP had a reputation for compromising such investigations, by omission and commission. It is now widely accepted that the system whereby the SAP investigated deadly force incidents perpetrated by their colleagues was untenable (The Network of Independent Monitors *et al*, 1995; Foster & Luyt, 1986).

There were also internal disciplinary mechanisms within the SAP. Under the Police Act 7 of 1958 as amended, in cases of alleged misconduct involving constables, sergeants and warrant officers, a departmental hearing could be conducted by a lieutenant (or higher officer), who was empowered to punish by means of reprimands and fines. Alleged misconduct among higher ranking officers was handled by a police board of inquiry appointed by the Commissioner or Minister to make recommendations directly to the Minister. The actual operation of these internal SAP disciplinary mechanisms was kept secret. But a few studies revealed that the discipline dispensed to officers who used excessive force was generally rather lenient. Furthermore, it was SAP policy not to conduct departmental enquiries in cases where officers were acquitted of criminal charges, even if they had violated police regulations, and those who were convicted of criminal violence were not automatically dismissed (e.g. Weitzer & Repetti, 1991; Foster & Luyt, 1986).

At this time, the judicial commission of inquiry was the only type of investigation into controversial SAP conduct that was ostensibly independent and

publicly transparent. However, these commissions were considered to be somewhat ineffective mechanisms, having "... no appreciable corrective impact on police practices" and, between 1985 and 1989, only one commission was appointed concerning the SAP (Weitzer & Repetti, 1991:3).<sup>45</sup>

From the late eighties pressure mounted for the introduction of some form of independent oversight of the SAP (e.g. Scharf, 1994[a], 1992; Weitzer & Repetti, 1991; Hansson, 1990[a], 1989). Such proposals were, however, adamantly opposed by the police and the official opinion expressed was that, "it would be a sad day in any country when you have to have a body to police the police" (SAP Spokesman in: Weitzer & Repetti, 1991:2). Nevertheless, in 1991 the National Peace Accord provided for the establishment of new police investigatory units mandated to investigate crimes of political violence, allegations of SAP bias and serious misconduct. The civilian oversight component of this new system comprised Police Reporting Officers whose task it was to receive and oversee the investigation of complaints against the SAP, and to provide feedback to the National Peace Committee.<sup>46</sup>

## **The Law and It's Shortcomings**

### ***Introductory Comment***

Until recently much of the academic writing published on the use of deadly force by the SAP comprised critiques of the law, particularly section 49 of the Criminal Procedure Act 51 of 1977 as amended. This legislation permitted both the police and civilians to use deadly force to effect an arrest or prevent an escape, under certain conditions.<sup>47</sup> Similarly, the common law sanctioned killing in self defence, in defence of another, in defence of property, and out of necessity. Police officers were also permitted to use deadly force in the dispersal of illegal gatherings, in obedience to the orders of a superior officer, and to maintain law and order. What follows, is a critical examination of the legal powers that were accorded the SAP, with the exception of private defence and necessity which have already been discussed in Chapter Three.

### ***Effecting an Arrest and Preventing an Escape***<sup>48</sup>

In terms of section 49(2) of the Criminal Procedure Act 51 of 1977 as amended, it was lawful to kill to effect the arrest or prevent the escape from custody of anyone:

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45 The Kannemeyer Commission of 1985. But from 1990 an increasing number were appointed to investigate police conduct; starting with the Harms Commission which examined allegations of SAP deaths squads and the Goldstone Commission which assessed the Sebokeng public order incident.

46 Police Reporting Officers could not be police, but ex-police were eligible, see Jeffery (1991).

47 Also see the Correctional Services Act 8 of 1959 as amended.

48 See Louw and De Jager (1988) on historical development.

(1) who was reasonably suspected of a Schedule One offence; (2) who fled or otherwise resisted arrest; and (3) who could not be arrested or prevented from fleeing by means other than killing. The offences listed under Schedule One included serious violent crimes, offences against the State, as well as crimes that were less serious by comparison and not necessarily violent like breaking and entering, theft, and receiving stolen property.<sup>49</sup> This defence had the most stringent set of requirements of all the grounds of justification: the suspect had to be on the point of being arrested; s/he had to be made aware that an attempt was being made to arrest her/him; and had to flee with this knowledge and the intention of avoiding arrest (*S v Salvier*, 1993; *S v Barnard*, 1986; *Macu v Du Toit*, 1983).

The importance of the latter requirement was first emphasised in the minority judgement of Botha in *Macu v Du Toit* (1983). In this case, a farmer and his sons claimed they discovered a number of suspects stealing fresh produce from their farm. When the suspects fled, the farmer and his sons gave chase and shot one of the suspects in an attempt to effect an arrest. After the shooting, the uninjured suspects bolted. In the minority judgement it was argued that, the intention of the suspects who fled after the shooting may *not* have been to evade arrest but to avoid being shot. It was reasoned that the suspects might not have been aware that their pursuers intended merely to effect their arrest. Indeed, as they had already seen their accomplice shot, it was likely they feared their pursuers also intended to shoot them. Hence, the minority judgement emphasised that anyone intending to make an arrest must take reasonable steps to ensure a suspect is made aware of this intention.

Minimum force was also required for this defence and it was recommended that less-than-lethal alternatives be used prior to deadly force (*Matlou v Makhubedu*, 1978). The Courts ruled further that it was not legally justifiable to use deadly force to effect an arrest or prevent an escape if an innocent third party was *foreseeably* endangered (*George NO v the Minister of Law and Order*, 1987; *Prince & Another v the Minister of Law and Order & Others*, 1987).<sup>50</sup>

The procedural question of who ought to bear the burden of proof when section 49(2) was invoked as a justification for killing was a contentious issue. It is a fundamental principle of criminal law that the *State* should prove all aspects of an accused's guilt and rebut all defences raised. The traditional test applied in criminal cases is that of reasonable doubt. In *S v Swanepoel* (1985), however, the Appellate Division (AD) confirmed the earlier decision of *R v Britz* (1949) that, for the purposes of section 49(2) the burden of proof was to rest upon the *accused*, but that the Court was to apply the less stringent test of a balance of probabilities in such cases. A number of legal scholars opposed this unusual requirement, maintaining that the State should bear the onus of proof when this defence was employed (e.g.

49 See Schedule 1 of The Criminal Procedure Act 51 of 1977 as amended.

50 Although this referred to section 49(1), it was also applicable to 49(2), see Dendy (1988) and Knobel (1988).

Visser, 1987; Kotze, 1980). It was argued in particular that it was unfair to require that an accused bear the burden of proof if s/he relied on section 49(2), but not if s/he invoked necessity or private defence. The counter-argument was that this deviation from the legal norm served to limit abuse of the wide protection provided by section 49(2). Indeed, in S v Swanepoel (1985) the AD decided that because this provision did *not* require proportionality, the additional constraint of placing the onus of proof on the accused was essential. In support of this position the AD cited Justice Schreiner's rationale in the early case of R v Britz (1949):

"[b]earing in mind the great risk that firearms may, if the protection is too easily obtainable, be lightly used upon occasion to prevent the escape of someone suspected, reasonably but perhaps wrongly, of some possibly not very serious crime, and bearing in mind also that emphasis which our law and customs have in general laid upon the sanctity of human life, I am satisfied that the Legislature must have intended it that a person who has killed another and seeks the very special protection afforded by s44 [of the Criminal Procedure and Evidence Act 31 of 1917] should have to prove, by a balance of probabilities, the circumstances specified in this section, as pre-requisite to immunity. ... The form of the section itself suggests that the protection is only available when the circumstances are all shown to be present, and that it is not available where their presence has only not been negated" (In S v Swanepoel, 1985:585 G-I & C-D).

In the USA there has been a great deal of debate over the circumstances under which it ought to be lawful to use deadly force to effect an arrest. Although the same cannot be said with respect to South Africa, in the eighties this issue did draw more scholarly attention than many other topics in this field (Cockrell, 1986). Section 49(2) was heavily criticised by legal scholars and there were repeated calls for reform (e.g. Hansson, 1990[a]; Louw & De Jager, 1988; Osbourne, 1987; Cockrell, 1986). Two main objections were raised: the inclusion of civilians, and the exclusion of proportionality as a requirement. It was argued that the protection of this provision should be limited to peace officers because it is their duty to effect arrests and they are arguably less likely to exercise the privilege irresponsibly (e.g. Cockrell, 1986). Furthermore, section 49(2) was said to violate proportionality by permitting the killing of those suspected of relatively minor and non-violent offences, and this legislative provision was characterised as anachronistic and anomalous (Cockrell, 1986). It was said to be a remnant of the early rule in English common law which permitted the killing of fleeing felons at a time when all felonies carried the death sentence. It was deemed anomalous because it was in effect a legalised circumvention of due process: it enabled the killing of a suspect without trial or conviction (Louw & De Jager, 1988; Cockrell, 1986). A renowned legal scholar went so far as to characterise section 49(2) as a "state-authorised lynch law" (Milton in: The Sunday Times, 24 March 1996). Indeed, considering that the object of arrest is to ensure the presence of an accused at trial, killing to effect an arrest is a contradiction in terms (Cockrell, 1986).

South African law pertaining to arrest was also out of kilter with relevant legal developments in other Western countries. For instance: in Canada and North America the lawful use of deadly force to arrest was limited to peace officers (Section 25(4) of the Criminal code of Canada; *Tennessee v Garner*, 1985 resp). In the UK the seriousness of the suspected offence and the force used to arrest had to be proportional (Section 3 of the Criminal Law Act of 1967 as amended). And in the USA, deadly force was restricted to arrests in which suspects were considered dangerous (*Tennessee v Garner*, 1985). Accordingly some legal scholars recommended that section 49(2) be reformed to permit only peace officers to employ deadly force in the arrest of dangerous fleeing suspects (e.g. Hansson, 1990[a]; Louw & De Jager, 1988; Osbourne, 1987; Cockrell, 1986). However, this protection-of-life standard has been heavily criticised and many contemporary scholars prefer the more restrictive defence-of-life standard (Geller & Scott, 1992). The key argument here has been that suspected offences are unreliable predictors of future dangerousness. Therefore a suspect's actual behaviour during an arrest ought to be the deciding factor (e.g. Petersilia *et al*, 1985). In other words, deadly force should be used only against suspects who directly threaten life while resisting or fleeing from arrest.

**Table 5.10:**  
**Summary of Restraints for Arrests and Preventing Escapes, 1991.**

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*	The minimum force necessary to arrest or prevent escape.
*	Not foreseeably endangering an innocent third party.
*	Whenever feasible:
	- ensure the person to be arrested is aware of this intention;
	- employ less-than-lethal means before resorting to deadly force (recommended).

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### ***Dispersing Public Gatherings***

Public gatherings were officially banned in South Africa until March 1991.<sup>51</sup> The Internal Security Act 74 of 1982 as amended, which has now been repealed,<sup>52</sup> permitted members of the SAP to use deadly force to disperse gatherings classified as riotous or prohibited. Gatherings at which anyone was likely to be seriously injured or property damaged were deemed riotous, and prohibited gatherings were

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51 Although meetings were increasingly permitted after late 1989, see Jeffery (1991).

52 Specifically sections 46 to 53 and 57. Three other Acts also governed public demonstrations: The Gatherings and Demonstrations in the Vicinity of Parliament Act 52 of 1973 as amended, the Gatherings and Demonstrations in or near Court Buildings Prohibition Act 71 of 1982 as amended, and the Gatherings and Demonstrations in or near Union Buildings Act 103 of 1992 as amended. All of these have been repealed.

those banned or restricted by the Minister. Generally, legal texts did not include this defence as a separate ground of justification, and it was not frequently employed by officers who killed when dispersing crowds. Instead, private defence and effecting an arrest were more popular defences. Nevertheless, the dispersing of a riotous or prohibited gathering has been treated as a distinct defence here because it was included in the SAP Standing Orders (1986) as a separate condition under which police could use deadly force, and the legislation contained certain rather specific restraints on the use of force under these circumstances.

To elaborate, before resorting to deadly force to disperse an illegal gathering, police were required when feasible to give an audible oral warning in both official languages, and to allow sufficient time for people to comply.<sup>53</sup> Less-than-lethal weapons had to be employed before firearms were used, and when force was employed it had to be the minimum necessary to disperse the gathering concerned (The Internal Security Act 74 of 1982). This defence was not available to civilians and when raised as a justification for killing, the onus was on the State to prove beyond a reasonable doubt that the accused concerned had not acted in this capacity (Snyman, 1989).

**Table 5.11:**

**Summary of Restraints for Dispersing Illegal Gatherings under the Former Internal Security Act.**

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*	The minimum force necessary to disperse the gathering.
*	Whenever feasible:
	- give audible orders to disperse in both official languages;
	- allow sufficient time to comply with orders to disperse;
	- employ less-than-lethal weapons before using lethal force.

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The main problem with this aspect of the law was the fact that it violated the basic right to assemble freely and placed the SAP in the position where they were required to disperse the vast majority of gatherings (e.g. Todd, 1994; Jeffery, 1991). It was argued that outlawing public gatherings actually increased the probability of death, injury and property damage by preventing co-ordinated planning and organisation by police, organisers, and traffic authorities and medical services. At a more technical level, the law governing crowd dispersal by the police was criticised for violating the principle of proportionality and placing insufficient emphasis on the incremental use of force (e.g. Hansson, 1990[a]; Haysom, 1987[a]). By the early nineties it was widely agreed that an entirely new legal framework for public protest was imperative, and after the transition was announced, even the SAP underscored the

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53 English and Afrikaans. Oral warnings and orders to use force had to come from a Warrant Officer (or higher ranking officer).

need for such legislative change (Jeffery, 1991).

### ***Obedience to Orders***

For members of the SAP, the common law sanctioned killing in obedience to the orders of a superior officer, when not manifestly unlawful (Burchill & Milton, 1994; Snyman, 1993). This principle has been explained as follows:

"[t]hey will therefore be excused from obeying any order which is in fact illegal, provided that it is not blatantly so ... [For] looked at from the point of view of the individual soldier or police [officer] it is unfair to train a [wo] man in automatic obedience, and then penalize him [her] for acting in the way the State itself has trained him [her] to act" (Gordan in: Snyman, 1993:130).

The defence required that the minimum force necessary be used to execute an order, and that the force be proportional to the lawful purpose to be achieved.<sup>54</sup> When this justification was raised for killing, the onus was on the State to prove beyond a reasonable doubt that the accused concerned had not acted in this capacity (Snyman, 1993).

Killing in obedience to the orders of a superior officer was rarely employed as a defence outside of war situations and did not draw much scholarly attention.<sup>55</sup> But it was used by the SAP on a number of occasions during the civil war. The main criticism levelled at this defence was that it did not hold superior officers accountable for issuing orders to employ excessive force, and this is contrary to the requirements of the United Nations Code of Conduct for Law Enforcement Officers (e.g. The Network of Independent Monitors *et al*, 1995).

**Table 5.12:**

**Summary of Restraints for Obedience to Orders, 1991.**

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*	The minimum force necessary to carry out an order.
*	Proportionality between the force used and the objective to be achieved by the application of force.

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### ***Extra-ordinary Legal Powers***

The grounds of justification documented thus far are ordinary legal powers, but the Security Emergency Regulations (1989) provided members of the SAP with *extra-ordinary* legal powers (Dugard, 1977).<sup>56</sup> In particular, Regulation 2 gave police officers the power to use force against anyone whom they "thought" was a danger to

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54 Proportionality was assumed because it is a fundamental principle of SA common law.

55 However, see *R v Smith* (1900), *R v Cilliers* (1903), and *S v Werner* (1947).

56 Promulgated under the Public Safety Act 3 of 1953 as amended.

"public safety" or a threat to "public order". Before shooting in such emergency situations, police were required to give oral warning of their intention to shoot, and to fire only when shooting was the least amount of force necessary to overcome the threat in question. But the force used did *not* need to be proportional to the danger to be averted. No objective test was required for this defence and under these regulations the SAP were indemnified against criminal prosecution for actions taken in "good faith". Furthermore, it was the challenger and not the accused, who had to bear the onus of disproving the presumption. Section 103 of the Defence Act 44 of 1957 as amended, also indemnified the SAP against prosecution for any act "advised, commanded, ordered, directed or done in good faith ... in connection with the prevention of terrorism in any operational area".

These wide legal powers drew extreme criticism and repeated demands were made for their abolition (e.g. Jeffery, 1991; Hansson, 1990[a], 1989; Omar, 1990; Haysom, 1987[a]; Steytler, 1987[a]). It was argued that this indemnity placed the SAP above the law and negated other legal constraints on the use of force which amounted to:

"... a broad discretion to kill or injure without legal consequences. The onus on the victim to show that a policeman acted in bad faith when he fired recklessly into a crowd, or failed to fire a warning shot, or neglected to use less drastic forms of 'coercion', is nearly insuperable" (Haysom, 1987[a]:6).

It is noteworthy, however, that few police officers invoked the legal protection afforded them by this defence during the civil war years. This has been attributed to a combination of factors such as: the indemnity provisions deterring criminal charges against the SAP; police accused not needing to rely on these provisions as the Courts were extremely lenient in according them the legal protection of other defences; and deliberate avoidance due to the highly controversial nature of the provisions (Jeffery, 1991; Weitzer & Repetti, 1991; Hansson, 1990[a] resp).

**Table 5.13:**

**Summary of Restraints under Former Emergency Regulations.**

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- \* The minimum force necessary to avert a threat to public safety or order.
  - \* Oral warning of the intention to shoot.
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***Interim Summary Conclusion***

The indemnity provisions were an obvious violation of internationally accepted principles on the use of force by police, but the basic tenet of proportionality was also transgressed in the ordinary legal powers that were accorded the SAP to use deadly force to arrest, prevent escape and disperse illegal gatherings. Furthermore, the incremental use of force was not explicitly or consistently required for these



defences and restraint in the use of deadly force was not sufficiently emphasised. Finally, officers who foreseeably created the need to use deadly force were still protected under these legal provisions. Succinctly put, "South African criminal law allow[ed] police greater latitude in the use of force than that sanctioned by international standards" (Weitzer & Repetti, 1991:6).

### **The Law in Practice**

It was not only the law that was problematic, but the way in which it was interpreted by the Courts. A number of authors have maintained that the South African Courts were generally lenient in their application to the SAP, of the law governing the use of deadly force (e.g. Weitzer & Repetti, 1991; Hansson, 1990[a]; Haysom, 1987[b]; Foster & Luyt, 1986). A critical examination of the relevant case-law showed that the Courts failed to accord adequate weight to the right to life in deciding the lawfulness of killings by the SAP (Haysom, 1987[b]). And the following more detailed conclusion was based on an empirical study of firearm fatalities:

"[i]n practice, the legal system is failing to apply controls on the use of deadly force strictly and consistently in determining [criminal] liability. In effect this means that a high level of restraint is not required on the part of those who use deadly force in order for their actions to be deemed lawful and hence, for such persons to avoid legal sanction" (Hansson, 1990[a]:120).

This work also demonstrated that the lawfulness of most firearm homicides was effectively decided at closed informal inquests, without the benefit of oral evidence tested by cross-examination. It was thus proposed that formal inquest proceedings be conducted in all firearm homicide cases (Hansson, 1990[a]).

Although Weitzer and Repetti's (1991) investigation into SAP accountability for criminal conduct was based on a small non-random sample of criminal homicides by police, they made the following notable observations: (1) there had to be overwhelming evidence against officers for the Courts to actually convict police accused; (2) the Courts held police accused, who killed during political conflict, to lower standards of accountability than those who were tried for killing in the process of general law enforcement; (3) the Courts accorded considerable weight to senior officers' opinions on appropriate police conduct; (4) the Courts tended to favour police versions of events over those of civilian eye-witnesses in cases involving killings by police during political conflict; and (5) when police were convicted it was frequently for lesser offences than the initial charges and the sentences were often lenient. Taken together these findings suggest a pattern of undue leniency in the application of the law to police officers accused of unlawful gun homicides.

It should not be surprising to find therefore that only a fraction of complaints made against the SAP resulted in criminal prosecutions, and that a relatively small

proportion of officers were convicted.<sup>57</sup> Indeed the number of police who were convicted and discharged from the SAP as a result of misconduct remained rather constant throughout the eighties -- between 200 and 250 convicted and 10% discharged p.a. -- despite the increased rate at which the SAP killed and injured people after 1985 (Weitzer & Repetti, 1991:3; Foster & Luyt, 1986). It seems that the SAP were seldom held accountable for misconduct, particularly the excessive use of force. All factors considered, the view of the SAP as a "... wholly unaccountable force, whose officers [could] abuse power with virtual impunity", appears to be justified (Weitzer & Repetti, 1991:1).

### CONCLUDING COMMENT

Although a range of factors contributing to the excessive use of force by the SAP have been examined separately, it is important to consider these variables as inter-related and potentially cumulative in effect. To recap: a police subculture supportive of the use of excessive force; a managerial climate in which excessive force was condoned and probably encouraged; an ineffective complaints mechanism controlled by the SAP; an understandable public reticence to lodge complaints against the police; prosecutors who were inhibited in charging police due to their close working relationship and their reliance on police to provide the necessary evidence; less than optimal legal restrictions on the use of force by the SAP; and leniency in the treatment of police accused by the Courts. Other contributory factors have been proposed in relation to the excessive use of force by the SAP. Jeffery (1991) noted the following additional relevant variables with respect to public order policing: the deployment of inadequate numbers of police officers to manage extremely large crowds;<sup>58</sup> the use of young and inexperienced officers who had received very limited training in riot control techniques; an overemphasis on the use of force in police training for riot control; a hot climate that discouraged police from wearing protective gear and decreased the efficacy of teargas and water canons; and volatile crowds that were antagonistic toward the SAP and prone to extreme violence.

More recently the Network of Independent Monitors *et al* (1995) identified a number of key variables by examining police activities between 1990 and 1995. One of the most notable factors revealed was the "climate of fear" that has permeated the police force in this country and been reinforced by increased attacks on police and heightened violence in civil society (1995:32). Shortcomings in police methods of arrest and less-than-lethal tactics were a second important category of factors to emerge from this investigation: police practices that increase the probability of escape attempts or resistance to arrest -- like failing to hand-cuff suspects promptly

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57 In 1986 two out of 338 complaints resulted in criminal trials, see Weitzer and Repetti (1991).

58 Only 20 to 30 riot police for crowds over 50000 strong, see Jeffery (1991).

or securely, and neglecting to search suspects for weapons -- increase the need for police to use force.

The literature available on the use of deadly force by the SAP is paltry when compared to work in this field in North America. In particular there has been a glaring sparsity of empirical research on the police and guns in South Africa. For obvious reasons much of the writing has been focused on the use of force in public order policing, with a relative neglect of this issue in general law enforcement. Furthermore, in contrast to the USA, there has been more concern over SAP force than their use of guns.

Despite the extreme differences between these societies, some similar issues have emerged in this arena; most notably the emphasis on the way in which police use force in dealing with political protest, and the fact that police tend to kill and severely injure disproportionately more black than white people. To conclude, the accumulated evidence indicates a routine use of excessive force and a general lack of restraint in the use of force by the SAP. Significantly, this conduct was not only common during the peak civil war years, but has been reflected in recent police practice (e.g. *The Express on Sunday*, 3 August 1997; *The Network of Independent Monitors et al*, 1995).

## CHAPTER SIX

### RESEARCH PROCEDURE

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#### A BRIEF JUSTIFICATION

A study of firearm fatalities may seem ill-advised considering the criticism raised against research that neglects non-use, missed shots and injuries. A number of factors particular to the South African context weighed heavily in the decision to pursue this investigation including, inter alia, the extremely limited number of accessible and reliable sources of data on firearms, the relative quality of the information available on fatal and non-fatal shootings, and the pressing need for empirical research in this field.

To elaborate further: in terms of the classificatory system used to record causes of death, firearm fatalities were deemed non-natural deaths and labelled as accidents, suicides, assaults, or deaths resulting from legal intervention. Because the Inquest Act required that an autopsy be performed in all non-natural fatalities, mortuary registers contained unusually complete samples of gun deaths. The categories of information recorded were also relatively consistent across cases and included variables relevant to research. Furthermore, according to the law there had to be an inquest or a criminal trial for every gun death and this enabled cases to be traced through the legal process.<sup>1</sup>

By contrast, there were no comparable sources of data on non-fatal shootings. Whilst hospital records were an obvious source of information on gunshot injuries, these would not have yielded a representative sample. In South Africa at this time, not everyone who was shot received medical treatment as health services were limited and disrupted by political conflict. Also, because hospital records pertain primarily to victims' injuries rather than shooters' characteristics and circumstances of shootings, these data were of limited relevance to research on gun use. Records of criminal trials -- for instance, attempted murders and assaults with firearms -- constituted another source of information on non-fatal shootings. However, details of the weapons used in each incident were not specified in court registers, hence, extracting firearm cases would have involved examining transcripts for all violent offences. Even if a random sample of these non-fatal shootings were to have been selected by such time-consuming means, it would not have been representative of non-fatal shootings because only a proportion of these cases are heard as criminal matters.

Police records on shots fired were arguably the most valuable source of information on non-fatal shootings in existence at the time. These comprised data on

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1 Using inquest and criminal case registers.

incidents in which officers had fired their guns no matter the outcomes. Although this information would have been invaluable for research purposes, independent researchers were denied access. Furthermore, unlike the North American police, the SAP did not routinely record averted shootings and as recently as 1995 there was no known source of data on this topic in South Africa.

Considering the limited nature of the information available on non-fatal shootings and the comparably high quality of data on fatal shootings, a study of firearm fatalities was deemed preferable. Nevertheless, the fact that this research elucidates only the most extreme of the potential outcomes of gun possession must be borne in mind.

### AIMS AND OBJECTIVES

Given the dearth of scholarly work on firearms in this country, the general purpose of this study was to contribute to the development of the field by expanding the empirical base and improving the conceptual foundation, hence the strong exploratory and descriptive component (see Table 6.1). Overall, it was hoped that the work would inform theory and policy on firearms and help to shape contemporary discourse on guns as a social problem in South Africa. This required something of a 'stock-taking' exercise; searching for and compiling relevant information that was fragmented across many sources and, where feasible, transforming it into a more useful form. It was also envisaged that the computerised database constructed for this study might be useful in the development of a permanent national database on gun-related issues. In particular the research data were seen as a useful baseline for monitoring temporal changes and evaluating the impact of future interventions.

The first of the specific aims was to provide a comprehensive description of a representative sample of fatal shootings including: the demographic and behavioural characteristics of the victims and the shooters, the circumstances surrounding the shootings, the nature of the weapons, the injuries sustained and the legal process that followed each incident. The second aim was to examine the nature and extent to which shooters employed restraint before they resorted to deadly force. The central purpose behind developing a comprehensive 'picture' of fatal gun use was to enable critical examination, particularly the identification and prioritising of problems. This differs markedly from the traditional approach in which guns have been *assumed* to constitute a problem, and private possession has been posited as *the* issue. But these assumptions lack sound empirical support and many gun controls have proven relatively ineffective at reducing violence. Hence, an alternate approach was adopted in this study; here the starting point was *whether* gun-related problems existed. The last of the specific aims was to inform recommendations for gun-related interventions in contemporary South Africa by utilising the findings from this

investigation and the accumulated research in the field.

**Table 6.1:**  
**Core Research Questions.**

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*	What 'lessons' may be derived from pertinent work conducted in other countries?
*	What characterised the victims, the shooters and the circumstances surrounding fatal shootings that occurred in metropolitan Cape Town between 1984 and 1991?
*	What forms of restraint including less-than-lethal means did the shooters employ before resorting to deadly force?
*	How were these shooting incidents processed within the legal system?
*	Were any gun-related problems indicated?
	If so, what was/were the nature of this/these problems?
*	What policy recommendations may be derived for contemporary South Africa?

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## **RESEARCH SAMPLE**

### **Sample Parameters**

A number of parameters were set in order to select a manageable sample of sufficient magnitude to bolster the reliability and validity of the findings. The first criterion was that only fatal shootings were to be included. The second parameter was the time span and the eight year period 1984 to 1991 (inclusive) was selected. The choice of these limits was based on sociological relevance and practical concerns. The sample period included the outbreak and duration of the civil war over Apartheid and the first years of the formal transition to democracy. The sample thus includes firearm fatalities that occurred under a wide range of interesting and changing sociopolitical circumstances. The lower limit of 1984 was unalterable because most of the pre-1984 court transcripts had been destroyed when the data collection for this study was begun in 1992.<sup>2</sup> Furthermore, at this time it took between two and three years for criminal cases to be completed and their outcomes made available in official records. Since information regarding the outcomes of criminal cases was imperative to this work and the plan was to complete data collection by the end of 1994, the upper time limit for the sample was set three years earlier at the end of 1991. The third parameter was the geographic area to be included and metropolitan Cape Town was chosen. It was hoped that Cape Town's official status as a metropolitan urban area might increase comparability between current and future studies. It also meant that certain useful background demographics were available. Finally, all of the fatal shootings that went to criminal trial were included: those in the Regional Magistrates' Courts and the Cape Division of the Supreme Court. To reiterate, this is a notable improvement on the pilot

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2 This was official State policy.

sample in which fatal shootings heard as criminal cases in Regional Magistrates' Courts were excluded (Hansson, 1990[a]).

### **Sample Selection**

At the time this research was conducted, the Salt River and Tygerberg Hospital mortuaries served the metropolitan Cape Town area. The first step in selecting the research sample was examination of the relevant death registers at these two mortuaries. The case details for each firearm fatality that met the abovementioned sample parameters were extracted from the registers along with data on victims' demographic characteristics and injuries. This process yielded a research sample of 1555 fatal shootings for the period 1984 to 1991.

## **DATA COLLECTION**

### **Data Collection Device**

The paper-and-pencil data collection instrument, constructed and tested by Hansson (1990[a]), was critically assessed and amended for the purposes of this study. Since one of the objectives was to develop a comprehensive database on the topic of gun-related issues, the decision was made to collect data for a wide range of variables. A selection of inquest and criminal trial records were thus examined to ascertain whether the range of variables could be usefully expanded. The following criteria were employed in selecting additional variables: there had to be research evidence demonstrating relevance and there had to be an accessible source from which to collect the necessary information. A number of new variables were subsequently added and some of the operational definitions were modified to enhance reliability.<sup>3</sup> A full list of the relevant variables and their operational definitions follows in the next section. The revised data collection device was then tested by application to a pilot sample of cases and further refined before it was employed to extract data for the full research sample. As the instrument was a paper-and-pencil device, it was designed with accuracy, economy of effort, and ease of use in mind. Where feasible, precoded options were provided to facilitate recording and a brief description of each shooting incident was also required in which noteworthy characteristics, contradictory issues and confusing aspects were highlighted.

### **Relevant Variables**

#### ***Introductory Comment***

The sample included accidents, suicides and homicides. One of the central foci of this study was the degree to which shooters employed restraint before using deadly force against others. Therefore, many of the relevant variables pertain to the *interpersonal* use of guns, and hence to homicides and not to suicides or other self-

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3 See Appendix A.

inflicted shootings.<sup>4</sup> Therefore, some of the variables that were examined in relation to homicides necessarily differed from those that were assessed for suicides. Furthermore, in suicides only one set of data had to be collected for both victims and shooters, these being the same person. Not surprisingly then, a reduced number of variables were examined in relation to suicide cases. The first two variables used to classify gun deaths in this sample were the highest court's ruling on whether each shooting had been: (1) suicidal or homicidal, and (2) intentional or unintentional. The variables examined in relation to homicidal shootings have been explained in some detail: an abbreviated title and a summary of the operational definition have been given. Considering the overlap, the variables pertaining to suicidal shootings have been summarised in Table 6.2.

### ***Details of Variables in Homicides***

**Year:** the year in which the victim was shot, as distinct from the year in which s/he actually died. The range was 1984 to 1991 inclusive.

**Political motivation:** whether the shooting was politically motivated, that is, did a shooting take place as part of overt political conflict or was it known to have been politically motivated as in the case of an assassination.

**Area:** the racial classification of the majority of residents in the area in which the homicide occurred. The Group Areas Act 36 of 1966, which was in force until 1991, legislated that people classified as belonging to different race-groups (under the Population Registration Act 30 of 1950) had to live in separate and specified areas. Nonetheless, racially mixed residential areas did exist. Homicides that occurred in non-residential areas like industrial zones and pastoral land were recorded as such.

**Place:** the place in which the homicide was perpetrated, like a victim's home or work-place.

**Whether shooter knew victim:** whether the shooter knew the victim. When available the nature of relationships between shooters and their victims was also recorded.

**Number of shooters:** the number of shooters who allegedly fired potentially fatal shots at the victim. For ease of reading the singular has been used throughout although some cases allegedly involved more than one shooter.

**Victim's sex:** the victim's biological sex.

**Victim's race-group:** the victim's racial classification. The categories African, Asian, coloured and white were used for this variable. Within the Anti-Apartheid Movement these terms were politically preferable to the official nomenclature set down in the Population Registration Act.

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4 For example, whether shooters fired warning shots and whether victims were fleeing when shot.



**Victim's age:** the victim's chronological age rounded to the nearest complete year.

**Victim's age-group:** the victim's age-group. After consulting a range of social demographics the following four age-categories were selected as sociologically meaningful: (1) children aged under 13, (2) adolescents aged between 13 and 18, (3) adults aged between 19 and 59, and (4) older adults over 59 years.

**Victim's employment status:** whether the victim was gainfully employed. Although the actual types of employment were also recorded when available, this variable was marred by a high level of missing data and the categories used in the case records were not mutually exclusive. Whether victims were gainfully employed was thus selected as a more reliable way of operationalising this variable. The category 'not gainfully employed' included all of those who were not economically active such as retired people, scholars and pre-school children.

**Victim's police status:** whether the victim was employed as a police officer.

**Victim's police rank:** the police rank held by the victim.

**Victim's private security officer status:** whether the victim was employed as a PSO.

**Victim's duty status:** whether the victim, if a police officer or PSO, was on duty at the time of the homicide.

**Victim's blood-alcohol level:** the concentration of alcohol in the victim's bloodstream. An additional aspect was whether the victim's blood-alcohol level was above or below the legal limit for drivers, that is, less than 0.08 grams (g) per 100 millilitres (ml). This also enabled subsequent classification into high and low levels of blood-alcohol.

#### **Shooter's:**<sup>5</sup>

**Sex** - the shooter's biological sex.

**Race-group** - the shooter's racial classification.

**Age** - the shooter's chronological age in years.

**Age-group** - the shooter's age-group.

**Employment status** - whether the shooter was gainfully employed.

**Police status** - whether the shooter was employed as a police officer.

**Police rank** - the police rank held by the shooter.

**PSO status** - whether the shooter was employed as a PSO.

**Law enforcer's duty status** - whether the shooter, if a police officer or PSO, was on duty at the time of the shooting

**Blood-alcohol level** - the concentration of alcohol in the shooter's bloodstream.

**Motive** - the shooter's motive for shooting, as distinct from the Court's finding.

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5 This information was collected for every alleged shooter.

### **Characteristics of Shooter's Firearm:**

**Handguns** - whether the shooter's firearm was a handgun or a long-gun.

**Automatic status** - whether the shooter's gun was fully/semi-automatic.

**Gun type** - the type of firearm used by the shooter.

**Calibre** - the calibre of the shooter's firearm.

**Ammunition type** - the type of ammunition used by the shooter.

**Gun license status** - whether the shooter was in legal possession of his/her firearm.

### **Operationalising Minimum Force and Proportionality**

The principles of minimum force and proportionality inform South African legal controls on the use of deadly force including firearms. These principles are elements of the broader concept of restraint in the use of force. To recap more specifically: minimum force is the notion that the least possible force should always be employed. When applied to the use of guns, it means that firearms should only be used when shooting constitutes the least possible force necessary to achieve a lawful goal. Proportionality has been a somewhat more contentious construct and there has been ongoing debate about how it should be defined. There are many ways in which to assess proportionality in the use of deadly force; numerous permutations are possible in the combination of factors and the weight that each can be afforded. Internationally, two of the principal standards in this arena have been based on different yardsticks. According to the defence-of-life standard, deadly force is considered proportional when used against a person who is directly endangering someone's life. In terms of the protection-of-life standard, deadly force is deemed proportional when used against a person who presents an immediate or future threat to life. In legal practice, the South African Courts have tended to weigh up varying combinations of factors when assessing proportionality in different cases, and deadly force has been condoned even in the protection of property (Snyman, 1993).<sup>6</sup>

Because minimum force and proportionality are theoretical constructs, it was necessary to operationalise these for the purposes of data collection. To this end, a set of variables were selected to indicate the level of force used, the kinds of restraints employed and the proportionality of deadly force in the sample shootings. These indicators were derived from South African case-law, academic literature, the internationally accepted codes and principles of the United Nations and the data comprising this research sample.<sup>7</sup> The following seven indicators were used to measure the extent to which shooters upheld the basic principle of minimum force:<sup>8</sup>

<sup>6</sup> See Chapter Three.

<sup>7</sup> See the United Nations Code of Conduct for Law Enforcement Officials (1979), the Report on Restraints on the Use of Force (1984) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

<sup>8</sup> Whenever circumstances permitted.

(1) firing only one potentially fatal shot at the victim;<sup>9</sup> (2) making the victim aware the shooter was a police officer; (3) informing the victim the shooter's intention was to arrest; (4) issuing an oral warning of the intention to fire; (5) firing a warning shot; (6) aiming at the victim's legs; and (7) employing at least one other less-than-lethal means. Each of these variables reflects a form of restraint in the use of deadly force. The first shows whether the shooter employed the minimum amount of potentially lethal force feasible under the circumstances and the remaining six represent a range of non-lethal tactics. The standard of minimum force was considered to have been violated unless such feasible alternatives were employed before potentially fatal shots were fired. Although it could be convincingly argued that shooters ought to be required to employ restraints like these whenever circumstances permit, a less exacting criterion was used as the expected level of application for the purposes of statistical testing in this study. The frequency with which each restraint was actually employed was measured against the benchmark of chance (50%).

Due to the diversity of opinion over proportionality, it was evaluated in a number of ways. Three composite measures were devised: the first was based on the defence-of-life standard (whether victim endangered life), the second reflected the protection-of-life standard (whether victim was dangerous), and the last included the additional criterion of whether shooters foreseeably endangered any third party by firing at their victims. Since jeopardising the lives of others contradicts the purpose of shooting in order to safe-guard life, this is a crucial aspect of proportionality. Hence, for the third measure, deadly force was considered proportional when used in relation to people who posed an immediate or future threat to life but only when nobody, other than the intended victim, was foreseeably endangered by the shooting. Data was also collected in relation to a range of other individual factors indicative of proportionality including inter alia: whether the victim was armed, the nature of his/her weapon, whether s/he was fleeing from the shooter etc.

### ***Minimum Force***

**Number of potentially fatal shots:** the number of shots fired by the shooter which were aimed at the victim's body or head. If the ammunition was likely to have been lethal no matter what part of the body it struck, then all shots fired were counted as potentially fatal.

**Number of entry-wounds:** the number of bullet entry-wounds sustained by the victim.

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9 Inflicting only one gunshot wound was not used because it was found to be an unreliable indicator of restraint: the number of bullets that actually struck victims was often a matter of chance rather than purposeful restraint.

**Shooter identified as police:** whether prior to firing, the victim was made aware that the shooter was a police officer. Indirect factors were considered for the purposes of this variable, like being in uniform or a marked vehicle.

**Victim informed of arrest:** whether prior to firing, the shooter informed the victim his/her intention was to arrest (when applicable).

**Oral warning:** whether prior to firing, the shooter gave the victim oral warning of his/her intention to shoot. To be counted in this category a warning had to comprise the basic elements of 'stop, or I'll shoot', that is, the desired action and the consequence. Warnings that did not fit this definition were counted separately, as abbreviated warnings, under other less-than-lethal means.

**Warning shot:** whether prior to firing a potentially fatal shot, the shooter fired a warning shot. When available the direction of warning shots was also noted.

**Aiming at victim's legs:** whether the shooter aimed to shoot the victim in his/her leg/s.

**Part of victim's body wounded fatally:** the part of the victim's body in which the fatal entry-wound was sustained.

**Other less-than-lethal means:** whether prior to firing, the shooter employed any other less-than-lethal means of achieving his/her objective (in addition to those already specified). If applicable, what less-than-lethal means were employed, e.g. giving chase on foot, engaging in unarmed physical struggle, employing verbal persuasion, taking cover, calling for police assistance and so on.

### ***Proportionality***

**Shooter foreseeably endangered others:** whether the shooter foreseeably endangered any third party by firing.

**Whether victim was armed:** whether the victim was armed with any kind of weapon.

**Victim's weapon type:** the nature of the victim's most lethal weapon (when applicable):

**Handguns** - whether the victim had a handgun or a long-gun.

**Automatic status** - whether the victim's gun was fully/semi-automatic.

**Gun type** - the victim's type of firearm.

**Calibre** - the calibre of the victim's firearm.

**Ammunition type** - the victim's type of ammunition.

**Gun license status** - whether the victim was in legal possession of his/her firearm.

**Whether victim threatened anyone:** whether the victim actively threatened anyone immediately prior to being shot. If applicable, the nature of the most serious threat s/he made was noted.

**Whether victim fled:** whether the victim was fleeing from the shooter -- on foot or by any other means -- immediately prior to being shot.

**Side of victim's body wounded fatally:** the side of the victim's body in which the fatal entry-wound was sustained, that is, the front, back or side of the body.

**Whether victim was a suspect/convict:** whether the shooter had reasonable suspicion prior to firing, that the victim had committed a criminal offence. If applicable, the nature of the most serious offence was recorded.

**Whether victim was dangerous:** considering the relevant factors that were known to the shooter at the time, if the victim had not been shot would s/he have been likely to endanger anyone's life immediately or in the future (the protection-of-life standard). In other words, would a reasonable person in the shooter's position have believed that the victim constituted a significant threat to life.

**Whether victim endangered life:** did the victim actually threaten anyone's life immediately prior to being shot (the defence-of-life standard).

### ***Characteristics of Legal Process***

**Highest court:** the highest court to have ruled on the lawfulness of the shooting, that is, an Inquest Court, a Regional Magistrate's Court or the Supreme Court.

**Type of inquest:** whether the case was heard at a formal or informal inquest. At a formal inquest oral evidence is led and cross-examination is permitted, whereas at an informal inquest there is no oral evidence and the Court's findings are based solely on documentary evidence.

**Type of criminal court:** whether the criminal trial was held in a Regional Magistrate's Court or the Supreme Court (if applicable).

**Lawfulness:** the highest court's finding on the lawfulness of the shooting, that is, lawful, unlawful or undetermined.

**Legal classification:** the legal classification made by the highest court to consider the incident, e.g. self defence, arrest, necessity, murder.

**Shooter charged:** whether criminal charges were brought against the shooter for this killing. If applicable, the nature of the most serious criminal charge was noted.

**Shooter prosecuted:** whether the shooter was prosecuted for this fatal shooting.

**Shooter legally represented:** whether the accused shooter was represented by legal counsel at trial (if applicable). If so, it was noted whether defence counsel was private or state-appointed.

**Shooter convicted:** whether the accused shooter was convicted at trial. If applicable, the most serious offence was recorded.

**Shooter's sentence:** the most severe sentence handed down to the convicted shooter (if applicable). When the accused was convicted of murder it was noted whether the Court found extenuating circumstances. Prior to the abolition of

the death penalty in 1995, if an accused was convicted of a capital offence and the Court failed to find extenuating circumstances, the death sentence was mandatory (The Criminal Procedure Act 51 of 1977 as amended). Extenuating circumstances included factors such as youthfulness, limited intellectual ability and provocation.

**Shooter appealed:** where applicable, whether the convicted shooter applied for leave to appeal against his/her conviction or sentence. If the shooter was granted leave to appeal, the outcome of his/her appeal was noted, e.g. conviction overturned, death sentence commuted to life imprisonment. At the time of this study there was no automatic right to appeal. Convicted offenders who wished to appeal had first to apply for leave to appeal and only if granted such leave could they lodge an appeal. Under the new dispensation, however, convicted persons now have a right to appeal (Cowling, 1994).

**Table 6.2:**  
**Variables for Suicides and Homicides.**

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***SUICIDES***

**General Characteristics**

Year  
Area  
Place

**Victim's Characteristics**

Sex  
Race-group  
Age  
Age-group  
Employment status  
Police status  
Police rank  
PSO status  
Duty status  
Blood-alcohol level

**Nature of Victim's Injuries**

Number of entry-wounds  
Side of victim's body wounded fatally  
Part of victim's body wounded fatally

**Characteristics of Victim's Firearm**

Handgun or long-gun  
Automatic status of gun  
Gun type  
Calibre  
Ammunition type  
Gun licence status

**Factors related to Restraint**

Number of potentially fatal shots  
Shooter foreseeably endangered others

## Characteristics of the Legal Process

Highest court  
Type of inquest

### **HOMICIDES**

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#### **General Characteristics**

Year  
Political motivation  
Area  
Place  
Whether shooter knew victim  
Number of shooters

#### **Victim's Characteristics**

Sex  
Race-group  
Age  
Age-group  
Employment status  
Police status  
Police rank  
PSO status  
Duty status  
Blood-alcohol level

#### **Shooter's Characteristics**

Sex  
Race-group  
Age  
Age-group  
Employment status  
Police status  
Police rank  
PSO status  
Duty status  
Blood-alcohol Level  
Motive for shooting

#### **Characteristics of Shooter's Firearms**

Handgun or long-gun  
Automatic status of gun  
Gun type  
Calibre  
Ammunition type  
Gun license status

#### **Factors related to Minimum Force**

Number of potentially fatal shots  
Number of entry-wounds  
Shooter identified as police  
Victim informed of arrest  
Oral warning  
Warning shot  
Aiming at victim's legs  
Part of victim's body wounded fatally  
Other less-than-lethal means

**Factors related to Proportionality**

- Shooter foreseeably endangered others
- Whether victim was armed
- Victims weapon type
  - Handgun or long-gun
  - Automatic status of gun
  - Gun type
  - Calibre
  - Ammunition type
  - Gun licence status
- Whether victim threatened anyone
- Whether victim fled
- Side of victim's body wounded fatally
- Whether victim was a suspect/convict
- Whether victim was dangerous (protection-of-life)
- Whether victim endangered life (defence-of-life)

**Characteristics of the Legal Process**

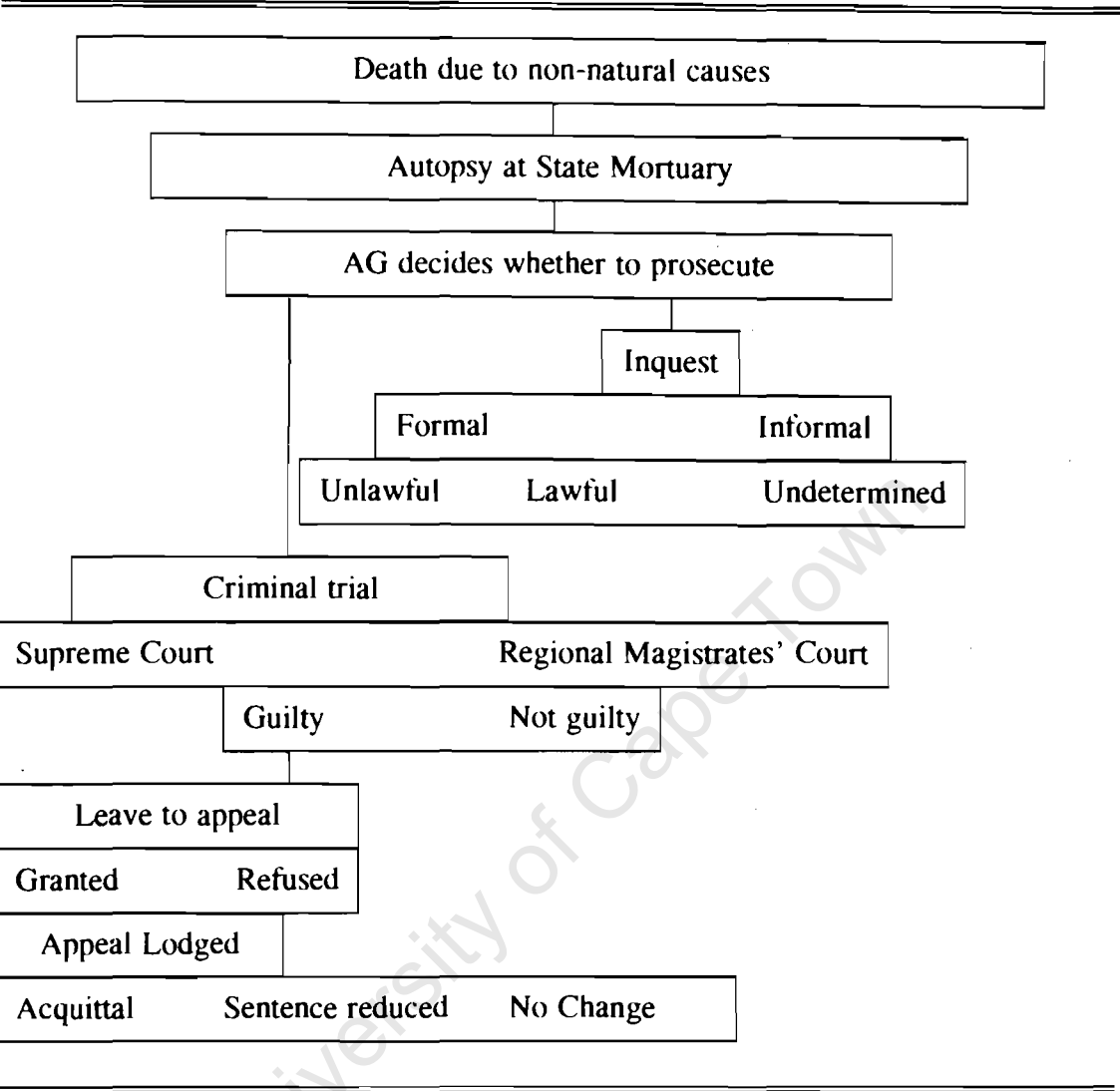
- Highest court
- Type of inquest
- Type of criminal court
- Lawfulness
- Legal classification
- Shooter charged
- Shooter prosecuted
- Shooter legally represented
- Shooter convicted
- Shooter's sentence
- Shooter appealed

**Tracing Case Records*****An Explanatory Note***

At the time of this study, once an autopsy had been conducted in a non-natural death, the Attorney General (AG) had to decide whether the matter was to be tried as a criminal case. The AG of each provincial division of the Supreme Court, or delegate, was authorised to prosecute any offence in any Court in the area in which s/he had jurisdiction, but in everyday practice this authority was usually delegated to senior state prosecutors. If the decision was not to prosecute and a magistrate was "satisfied by the police docket that death was not due to natural causes", an inquest had to be held (De'Ath substituted by Tiley v Add. Magistrate, 1988:776C-D). However, if the AG decided to prosecute, the case was usually brought to criminal trial without an inquest; only in rare instances were cases heard by an inquest *and* a criminal court. When there was to be a prosecution the AG also had to decide whether the trial was to be held in the Supreme Court or in a lower Regional Magistrates' Court. Generally speaking, this decision was based on an assessment of the severity of the alleged offence in question because the maximum sentences that could be handed down by Regional Magistrates were lower than those permitted to judges of the Supreme Court.



Table 6.3:  
Legal Alternatives in Non-Natural Deaths.



There was an important difference between a Court's finding in a criminal trial and an inquest. In the case of a fatal shooting, a Court had to decide whether the State had presented sufficient evidence to find beyond a reasonable doubt that an offence had been committed by an accused. In contrast, an inquest court was required to decide whether a death was legally justified or unlawful. An inquest magistrate was *not* required to find any specific party criminally liable for a death. Additionally, an inquest court had to make findings on a balance of probabilities and not according to the more stringent test of proof -- beyond a reasonable doubt -- used in criminal trials (The Inquest Act 58 of 1959, as amended). In other words, an inquest magistrate could reach one of three findings: lawful, unlawful or no finding if s/he was unable to reach a decision on the basis of the available evidence. In a criminal trial, a magistrate or judge had to decide whether each accused on trial was guilty or not guilty of the offences with which s/he had been charged. And the finding of a criminal court included three elements: (1) guilty or not guilty, (2) the name of the accused to whom this finding applied, and (3) the nature of the specific offence/s.

### ***Locating Inquests and Trial Records***

The case details extracted from the death registers were used to trace each fatal shooting to culmination in an inquest and/or a criminal trial. The first step was to examine the registers of the AG of the Cape Provincial Division in order to ascertain which cases had been prosecuted. The next step was to locate the inquest records of cases which the AG had declined to prosecute, using the inquest registers at the Regional Magistrates' Courts. At this time metropolitan Cape Town was served by six Regional Magistrates' Courts located in Belleville, Goodwood, Cape Town, Mitchell's Plain, Simonstown and Wynberg. Finally, the criminal case records of shootings in which the AG had decided to prosecute, were tracked via trial registers at the Regional Magistrates' Courts and the Supreme Court.

### **Extracting and Recording the Data**

The revised data collection device was used to extract the relevant information from the inquest and/or criminal case records pertaining to each of the fatal shootings in the research sample. In order to avoid systematic bias, the cases were dealt with in random order by three trained researchers who collected the data from the records. For the majority of the relevant variables -- like sex, race-group, place, gun type -- the data collectors merely had to extract existing information from the case records. For the remaining variables, however, they were required to make judgements about aspects of behaviour in context. For instance, they had to decide whether a victim was likely to have been dangerous and whether each restraint had been feasible under the circumstances. Post hoc analyses like this run the risk of being unfair and unrealistic armchair critiques. In an effort to address this issue, the data collectors were encouraged to visualise themselves in the shooter's position when assessing his/her conduct and to consider only what was known to the shooter at the time. They were also instructed to give shooters the benefit of the doubt if uncertain.<sup>10</sup> To enhance the reliability of the information, the three collectors made their assessments for each fatal shooting independently and were required to provide rationales for their judgements by citing data from the case records. Any discrepancies in the information recorded by different collectors were resolved by an independent evaluator. Overall, the level of disagreement among the three collectors was relatively low (five per cent). During the first stage the data collectors manually recorded the information onto preprinted forms designed for this purpose. These data were then checked thoroughly and entered into a computer database that had been developed for the storage and analysis of this particular information. Notably, the program was designed to accept only a certain type of data for a particular

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10 When it was deemed unfeasible for a shooter to have employed a particular restraint, this was treated as a positive in the final analysis, i.e. as if the restraint had been employed.

variable so as to limit entry errors.

## DATA ANALYSIS

In social research a complete data set - a sample equal to the background population - is something of an abstract concept. Inevitably a certain, usually unknown amount, of data are missing. In this study every effort was made to collect a complete sample of the gun deaths that occurred in metropolitan Cape Town between 1984 and 1991. Nevertheless it is probable that relevant cases were unavoidably excluded from this data set. For instance, political mistrust may have prevented anti-Apartheid sympathisers from reporting deaths to Apartheid authorities, and the bodies of some who died from gun shots may never have been discovered. Furthermore, case selection was based on causes of death denoted in hand-written registers, a data source subject to classificatory and recording errors. And a higher rate of such errors was likely during this period. The sudden increase in deaths resulting from intensified political conflict must have placed additional pressure on those administering the mortuaries, and associated aspects of the legal system. During data collection it became clear from tracking incidents that case records could, and did, disappear within the official system. In some instances this may have been purposeful for example, politically loaded cases may have been concealed. Of course it is also likely that many cases that went astray were simply misfiled or misplaced somewhere in the bureaucracy. Hence, although the data set for this study does approximate the complete population of fatalities caused by firearms in Cape Town over the specified eight year period, it remains a sample which has been treated as such statistically.

The research being exploratory and descriptive in orientation, emphasis was placed on generating hypotheses, identifying potentially interesting distributions and significant relationships among variables. For analysis suicides were separated from homicides, and the latter were further sub-divided into intentional and unintentional shootings.<sup>11</sup> In view of the extremely large amount of categorical data and the exploratory nature of the work, an elementary level of statistical analysis was conducted. Basic frequency counts and percentages were calculated, and analysed for a selection of single and cross-tabulated variables. Since one of the key aims was to explore the characteristics and behaviour of shooters *in relation* to their victims, the bulk of the cross-tabulatory analyses was performed on the homicide cases and only a few victim-related variables were cross-tabulated for the suicides. In homicide cases the following three key variables were cross-tabulated with most of the other relevant variables: (1) the lawfulness of each shooting, (2) whether it was politically motivated, and (3) whether shooters were police officers, PSOs or civilians. A small selection of victim and shooter characteristics was also cross-tabulated. For demographic variables the chi-square goodness-of-fit test was used to compare

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11 Not self-inflicted, so classified as homicides.

observed distributions with expected distributions derived from the relevant background populations (Noriusis, 1990). Variability and distributions across categories within the data set were tested further by analysing the standardised residuals for statistically significant chi-square values.<sup>12</sup>

The official records used as the data source for this study were not designed with social research in mind. Therefore, the level of missing data for some of the variables in the sample was relatively high. The frequency of missing data has been reported consistently for each variable as part of the results, and explicit cautions have been included to alert readers to instances in which missing data might have distorted the observed patterns.<sup>13</sup> Gun homicides were most affected by missing data, particularly variables reflecting characteristics of shooters and circumstances of shootings. This resulted from two main factors: First, because information in death registers pertains mainly to victims and their injuries, cases without inquest or criminal case records were characterised by high levels of missing data with respect to shooters and circumstances. Secondly, the sample was characterised by a substantial number of cases in which the shooters were never identified, and/or in which the circumstances of the shooting remained unknown to the authorities. While some such cases are inevitable in all systems, it is likely that the elevated quantity in this sample was a result of conditions peculiar to South Africa at the time. For instance, it is feasible that the police failed to resolve a large number of firearm homicides due to the chaotic conditions that accompanied the political conflict, the low level of public co-operation, and their own ineptitude and intentional laxity in conducting investigations.<sup>14</sup> The critical point about the missing data, however, is whether it was random, or whether it was patterned in a way that might have influenced the findings. To this end, cases that could not be traced beyond the death registers were scrutinised. Considering the civil war and the Nationalist state's counter-insurgency strategy, one of the first postulates was that the authorities may have removed records for politically sensitive cases. However, support for this premise was not forthcoming. From the information in the death registers, these cases did not appear to be politically significant, and the records for numerous politically explosive cases were available. When questioned about the reasons for the absence of court records in certain cases, record-keeping officials consistently referred to administrative error. And given the rather anachronistic, non-computerised filing system in operation at the time, this seemed to be a plausible explanation. Hence, in the absence of evidence to the contrary, it may be assumed that the missing data in these cases was random.

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12 See Hays (1994:859-861) for details.

A probability of 1% was consistently used for the statistical analyses.

13 Missing and contradictory data were noted and excluded from calculations.

14 Discussed further in Chapters Nine and Ten.

Cases with unidentified shooters and unknown circumstances comprise the second group of cases with high levels of missing data. These cases should be treated with particular caution, because the missing information may well be non-random. Closer examination of this group of shootings reveals a preponderance of black victims and circumstances directly related to political conflict. Considering the limited information that was available with respect to these cases, it is feasible though highly speculative, that the shootings were mainly: gun deaths caused by stray police fire during crowd management, politically motivated killings perpetrated by so-called third-force operatives, murders by drug dealers, and unlawful shootings covered up by police officers. Were this to have been the case, the reported findings probably under-represent unintentional shootings, politically motivated and criminal gun homicides. Furthermore, because restraint was particularly poor in the latter two categories, even the low average levels reported as results may be overly optimistic. Nevertheless, it is important to note that the pattern and direction of the findings are consistent with what was expected in Cape Town between 1984 and 1991.

## CHAPTER SEVEN

### RESEARCH RESULTS PART I: Analysis of Single Variables

#### OVERALL SAMPLE

##### Introductory Comment

The research sample comprised the 1555 cases of firearm fatalities that were found listed in the death registers of the Salt River and Tygerberg state mortuaries for the period from 1 January 1984 to 31 December 1991. Eighty-three per cent (1297) of these incidents were successfully tracked through subsequent stages of the legal process. The remaining 258 (17%) cases could not be traced beyond the death registers because neither inquest nor criminal trial records could be found with respect to these deaths.<sup>1</sup> These incidents were included in the data set in order to avoid undue bias but unfortunately increased the level of missing data for many of the relevant variables.<sup>2</sup>

##### Types of Firearm Fatality<sup>3</sup>

The vast majority, 80% (1237),<sup>4</sup> of the fatal shootings in this sample were homicides;<sup>5</sup> only 20% (318) were suicides. Also, less than one per cent (13) of the cases were unintentional which means that the vast majority, 99% (1542), were intentional shootings.

**Table 7.1: Fatal Shootings by Years, 1984 - 1991<sup>6</sup>**

Years	Frequencies	Percentages <sup>7</sup>	Rates per 100000 <sup>8</sup>
1984	101	7	7
1985	213	14	14
1986	180	12	11
1987	158	10	10
1988	136	9	8
1989	197	13	12
1990	237	15	13
1991	333	21	17

1 What actually became of these cases remains unknown.

2 Missing data (M) and contradictory data (C) excluded from calculations.

3 M = 0.

4 Figures were rounded to the nearest whole number or first decimal place.

5 Including unintentional shootings (13), none of which were self-inflicted.

6 M = 0.

7 Column totals have been excluded from most of the tables because rounding resulted in many not totalling the expected 100.

8 Calculated using Knobel's (1986) population statistics for Cape Town and The CSS (1994[i]) growth rates.

## SUICIDE CASES

### General Characteristics

#### *Years*<sup>9</sup>

**Table 7.2: Firearm Suicides by Years 1984 - 1991**

Years	Frequencies	Percentages	Rates per 100000
1984	33	10	2
1985	44	14	3
1986	33	10	2
1987	43	14	3
1988	40	13	2
1989	49	15	3
1990	39	12	2
1991	37	12	2

#### *Areas*<sup>10</sup>

The vast majority, 79% (250), of suicides took place in residential areas zoned for whites, but nine per cent (30) occurred in coloured areas, eight per cent (25) in racially mixed areas, three per cent (10) in African areas and one per cent (3) in non-residential areas like industrial estates or pastoral land.

#### *Place*<sup>11</sup>

The vast majority, 84% (267), of suicide victims shot themselves while at home and the remainder committed suicide in the following places: five per cent (17) indoors, five per cent (16) at work, three per cent (9) in vehicles and three per cent (8) out-of-doors.

### Victims' Characteristics

#### *Victims' Sexes*

The vast majority, 84% (266), of suicide victims were male and only 16% (52) were female. Considering the sex ratio of the background population,<sup>12</sup> males were significantly over-represented and females under-represented as suicide victims in this sample (The CSS, 1991[ii]).<sup>13</sup>

9 M = 0.

10 M = 0.

11 M = 3% (1).

12 Males 49% and females 51%.

13 M = 0.  $P < 0.01$ ,  $X^2 = 136.1$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 8.83$ ,  $-8.83$ .

### ***Victims' Race-Groups***

The vast majority, 85% (269), of suicide victims were white, but 11% (34) were coloured, four per cent (13) African and one per cent (2) Asian. Considering the racial composition of the background population,<sup>14</sup> whites were significantly over-represented, whereas coloureds and Africans were under-represented as suicide victims in this sample (The CSS, 1991[ii]).<sup>15</sup>

### ***Victims' Age-Groups***

The suicide victims ranged from 11 to 85 years of age, with a median age of 38, an average of 43 and a mode of 33 years. The vast majority, 75% (239), were adults, but 21% (68) were older adults, three per cent (9) were adolescents and one per cent (2) were children. Considering the age distribution of the background population,<sup>16</sup> people over 18 were significantly over-represented and those under 19 were under-represented as suicide victims in this sample (The CSS, 1991[ii]).<sup>17</sup>

### ***Victims' Employment Status***

The majority, 54% (147), of victims were gainfully employed at the time they committed suicide, but 46% (124) were *not* gainfully employed. Considering the employment rate of the background population,<sup>18</sup> gainfully employed persons were over-represented as suicide victims in this sample (The Ministry for Welfare and Population Development, 1995).<sup>19</sup>

### ***Victims' Blood-Alcohol Levels***

The bulk, 60% (151), of victims had *no* alcohol in their bloodstreams at the time that they committed suicide, but blood-alcohol levels ranged from zero to 0.38g per 100ml with the average at 0.06g. Thirty-two per cent (79) of victims had blood-alcohol levels that exceeded the 0.08g legal limit for driving, whereas eight per cent (21) had levels within the legal limit (Snyman, 1993).<sup>20</sup>

### ***Victims' Police Status***

An overwhelming majority, 92% (284), of suicide victims were civilians, but eight per cent (24) were police officers. Considering the number of police in the

14 Coloureds 54%, whites 26%, Africans 19% and Asians one per cent.

15  $M = 0$ .  $P < 0.01$ ,  $X^2 = 545.5$ ,  $df = 3$ .

Fwp  $< 0.01$ ,  $z = 20.47$ ,  $-10.51$ ,  $-6.08$ .

16 Older adults eight per cent, adults 55%, adolescents 18% and children 19%.

17  $M = 9\%$  (3).  $P < 0.01$ ,  $X^2 = 187.74$ ,  $df = 3$ .

Fwp  $< 0.01$ ,  $z = 4.78$ ,  $8.45$ ,  $-6.34$ ,  $-7.49$ .

18 Nationally, 62% not gainfully employed and 38% gainfully employed.

19  $M = 15\%$  (47).  $P < 0.01$ ,  $X^2 = 35.01$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 4.67$ .  
Treat with caution, the background statistics were national figures for 1995.

20  $M = 21\%$  (67).



background population,<sup>21</sup> police officers were significantly over-represented as suicide victims in this sample (The Commissioner of the SAP, 1990).<sup>22</sup>

### ***Police Victims' Ranks***

The majority, 59% (13), of police suicide victims held the rank of constable, but 27% (6) were special constables, five per cent (1) detective constables, five per cent (1) warrant officers and five per cent (1) sergeants.<sup>23</sup>

### ***Police Victims' Duty Status***

The majority, 83% (19), of police suicide victims committed suicide while off duty, but 17% (4) committed suicide while on duty.<sup>24</sup>

### ***PSO Status and Duty Status***

One per cent (4) of civilian suicide victims were employed as PSOs and all (4) of these victims were off duty at the time they committed suicide.<sup>25</sup>

### ***Nature of Victims' Injuries***

#### ***Number of Entry-Wounds***

The vast majority, 95% (303), of suicide victims sustained single entry-wounds, but five per cent (15) sustained at least two entry-wounds.<sup>26</sup>

#### ***Sides of Victims' Bodies Wounded Fatally***

The majority, 53% (159), of suicide victims shot themselves in the side, but 46% (139) shot themselves in the front, and one per cent (1) in the back of the body.<sup>27</sup>

#### ***Parts of Victims' Bodies Wounded Fatally***

The vast majority, 89% (283), of suicide victims shot themselves in the head, but 10% (32) shot themselves in the chest, one per cent (2) in the neck and 0.3% (1) in the abdomen.<sup>28</sup>

### ***Characteristics of Victims' Firearms***

#### ***Victims' Handguns***

The large majority, 92% (292), of victims committed suicide using handguns, but

21 Police comprised 0.3% of the national population.

22  $M = 0$ .  $P < 0.01$ ,  $X^2 = 530.19$ ,  $df = 1$ .  $Fwp < 0.01$ ,  $z = 22$ .  
Defence force members (10) were excluded.

23  $M = 8\%$  (2). No stats. test due to low expected frequencies.

24  $M = 4\%$  (1).

25 Total law enforcement = 12% (38).

26  $M = 0$ .

27  $M = 6\%$  (19).

28  $M = 0$ .

eight per cent (24) used long-guns.<sup>29</sup>

### ***Automatic Status of Victims' Guns***

The bulk, 56% (150), of victims committed suicide using guns that were *not* automatic, but 43% (116) used semi-automatic and one per cent (2) used fully-automatic firearms.<sup>30</sup>

### ***Victims' Gun Types***

Table 7.3 shows that revolvers and pistols were the guns of choice in suicides, with revolvers the most common type of handgun and shotguns the most common type of long-gun.<sup>31</sup>

**Table 7.3: Guns Types in Suicides**

Gun Types	Frequencies	Percentages
Revolver	128	41
Pistol	115	36
Unspecified handgun	48	15
Shotgun	15	5
Rifle	7	2
Assault rifle	2	1
Zipgun	1	0.3

**Table 7.4: Gun Calibres in Suicides <sup>32</sup>**

Calibres	Frequencies	Percentages
0.38 inch	57	23
9.00 mm	45	18
0.22 inch	32	13
6.35 mm	29	12
0.32 inch	28	11
7.65 mm	22	9
0.729 inch	15	6
0.357 inch	10	4
0.44 inch	4	2
0.303 inch	3	1
0.45 inch	3	1
0.410 inch	1	0.5
3.67 mm	1	0.5

29 M = 1% (2).

30 M = 16% (50).

31 M = 6% (2).

32 M = 12% (68). The mix of inches and mm was unavoidable; this was the information at source.

***Victims' Ammunition Type***

The vast majority, 95% (301), of victims used live bullets to commit suicide and only five per cent (15) used non-live ammunition.<sup>33</sup>

***Victims' Gun Licence Status***

The majority, 63% (99), of suicide victims were in legal possession of the guns they used, but 37% (58) were *not* in legal possession of their firearms.<sup>34</sup>

**Factors related to Restraint*****Number of Potentially Fatal Shots***

The majority, 80% (219), of suicide victims fired only one potentially fatal shot, but 20% (56) fired at least two such shots.<sup>35</sup>

***Shooters Foreseeably Endangered Others***

A small minority, five per cent (14), of suicide victims foreseeably endangered others by shooting themselves, but the vast majority, 95% (276), did *not* endanger others.<sup>36</sup>

**Characteristics of the Legal Process*****Highest Courts***

All of the cases the Courts found to be suicides were lawful by definition, hence there were no criminal trials and inquest courts were the highest courts to consider these cases.<sup>37</sup>

***Types of Inquests***

The vast majority, 98% (313), of suicide cases were heard as informal inquests, but two per cent (5) were heard as formal inquests.<sup>38</sup>

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33 Lead pellets between 1.27 and 9 mm fired from shotguns. M = 1% (2).

34 Treat with caution, M = 51% (161).

35 M = 14% (43).

36 M = 9% (28).

37 Because suicide was lawful.

38 M = 0.

## HOMICIDE CASES

### General Characteristics

Table 7.5: Gun Homicides by Years, 1984 - 1991 <sup>39</sup>

Years	Frequencies	Percentages	Rates per 100000 <sup>40</sup>
1984	68	6	5
1985	169	14	11
1986	147	12	9
1987	115	9	7
1988	96	8	6
1989	148	12	9
1990	198	16	11
1991	296	24	15

### *Political Motivation*

The majority, 69% (628), of homicides were *not* politically motivated.<sup>41</sup>

### *Areas*

Overall, 45% (551) of homicides occurred in residential areas zoned for Africans, 35% (434) in coloured areas, 14% (170) in white areas, five per cent (57) in racially mixed residential areas, and one per cent (14) in non-residential areas.<sup>42</sup>

### *Places*

The majority, 62% (501), of homicides were committed outdoors in areas that were neither victims' work-places nor their homes. Of the remainder, 13% (108) were committed in victims' homes, 13% (107) indoors in areas that were not victims' homes or work-places, six per cent (52) in vehicles, and five per cent (44) in victims' work-places.<sup>43</sup>

### *Whether Shooters Knew Victims*

The large majority, 70% (536), of shooters did *not* know their victims, but 30% (229) knew their victims.<sup>44</sup>

<sup>39</sup> M = 0.

<sup>40</sup> Population estimated using Knobel's (1986) base figure and growth rates from The CSS (1994[i]).

<sup>41</sup> M = 26% (325).

<sup>42</sup> M = 1% (11).

<sup>43</sup> Treat with caution, M = 34% (425).

<sup>44</sup> Treat with caution, M = 45% (624).

**Table 7.6: Shooter-Victim Relationships** <sup>45</sup>

Relationships	Frequencies	Percentages
Acquaintances	116	52
Opposition street gangsters	42	19
Intimate partners	24	11
Friends	12	5
Parents & children	10	4
Work colleagues	7	3
Ex-intimate partners	6	3
Other relatives <sup>46</sup>	6	3
Siblings	2	1

### ***Number of Shooters***

A total of 1237 victims were killed in this sample of shootings and at least 1389 shooters were involved in the perpetration of these homicides. In certain cases a number of shooters allegedly fired potentially fatal shots at a victim, but the Courts never established who had fired the shot/s that killed the victim. Furthermore, in some cases the number of shooters could only be estimated because all that was known was that more than one shooter had fired potentially fatal shots at a particular victim. However, the available data indicate that the vast majority of homicide victims, 93% (971), were killed by single shooters, and only seven per cent (74) were fired at by more than one shooter.<sup>47</sup>

### **Characteristics of Homicide Victims**

#### ***Victims' Sexes***

The vast majority, 91% (1123), of homicide victims were male; only nine per cent (114) were female. Considering the sex ratio of the background population,<sup>48</sup> males were significantly over-represented and females were under-represented as homicide victims in this sample (The CSS, 1991[ii]).<sup>49</sup>

#### ***Victims' Race-Groups***

The majority, 51% (626), of homicide victims were African, but 44% (542) were coloured, five per cent (59) were white and one per cent (10) were Asian. Considering the racial composition of the background population,<sup>50</sup> Africans were significantly over-represented whereas coloureds and whites were under-represented

45 M = 2% (4).

46 Not already included.

47 M = 1% (5).

48 Females 51% and males 49%.

49 M = 0. P < 0.01, X<sup>2</sup> = 864.67, df = 1. Fwp < 0.01, z = 20.99, -20.99.

50 Coloureds 54%, whites 26%, Africans 19% and Asians one per cent.

as homicide victims in this sample (The CSS, 1991[ii]).<sup>51</sup>

### ***Victims' Age-Groups***

Homicide victims in this sample ranged in age from one to 82 years with the median age at 25, the average at 27 and the mode at 22 years. The vast majority, 83% (1031), of homicide victims were adults, but 13% (161) were adolescents, two per cent (23) were children and two per cent (22) were older adults. Considering the age composition of the background population,<sup>52</sup> adults were significantly over-represented whereas adolescents, children and older adults were under-represented as homicide victims in this sample (The CSS, 1991[iii]).<sup>53</sup>

### ***Victims' Employment Status***

While the majority, 55% (563), of homicide victims were gainfully employed, a substantial 45% (459) were *not* gainfully employed. Considering the rate of employment in the background population, gainfully employed persons were significantly over-represented and people *not* gainfully employed were under-represented as homicide victims in this sample (The Ministry for Welfare and Population Development, 1995).<sup>54</sup>

### ***Victims' Blood-Alcohol Levels***

Homicide victims' blood-alcohol levels ranged from zero to 0.45g per 100ml and the average concentration was 0.07g. The bulk, 57% (366), of homicide victims had *no* alcohol in their bloodstreams at the time they were killed, but 34% (215) had levels that exceeded the legal limit for drivers (0.08g per 100ml), and nine per cent (58) were under this limit.<sup>55</sup>

### ***Victims' Police Status***

While the overwhelming majority, 96% (1188), of homicide victims were civilians,<sup>56</sup> three per cent (40) were police officers. However, considering the number of police in the background population,<sup>57</sup> they were significantly over-represented as homicide victims in this sample (The Commissioner of the SAP, 1990).<sup>58</sup>

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51  $M = 0$ .  $P < 0.01$ ,  $X^2 = 889.47$ ,  $df = 3$ .  
Fwp  $< 0.01$ ,  $z = 25.5$ ,  $-4.87$ ,  $-14.65$ .

52 Adults 55%, children 19%, youths 18% and older adults eight per cent.

53  $M = 3\%$  (31).  $P < 0.01$ ,  $X^2 = 449.56$ ,  $df = 3$ .  
Fwp  $< 0.01$ ,  $z = 13.45$ ,  $-4.13$ ,  $-13.83$ ,  $-7.73$ .

54  $M = 17\%$  (215).  $P < 0.01$ ,  $X^2 = 143.69$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 9.5$ ,  $-7.29$ . Treat with caution, the background statistics were national figures for 1995.

55 Treat with caution,  $M = 48\%$  (598).

56 Including PSOs = 2% (29).

57 Police comprised 0.3% of the national population.

58  $M = 0$ .  $P < 0.01$ ,  $X^2 = 325.06$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 18$ . Defence

## Shooters' Characteristics

### *Shooters' Sexes*

The vast majority, 99% (932), of shooters were male; only one per cent (9) were female. Considering the sex ratio in the background population, males were significantly over-represented and females under-represented as shooters in this sample (The CSS, 1991[ii]).<sup>59</sup>

### *Shooters' Race-Groups*

More than two-thirds, 36% (301), of shooters were white, but 32% (263) were African, 31% (255) were coloured and two per cent (9) were Asian. Considering the racial composition of the background population, whites and Africans were significantly over-represented and coloureds under-represented as shooters in this sample (The CSS, 1991[ii]).<sup>60</sup>

### *Shooters' Age-Groups*

The shooters ranged in age from five to 76 years. The median age was 28, the average was 30 and the mode was 22 years. However, these figures should be treated with extreme caution as 67% (930) of the data were missing. More generally, the vast majority, 96% (875), were adults whereas two per cent (19) were adolescents, 0.2% (2) were children and one per cent (12) were older adults. Considering the age composition of the background population, adults were significantly over-represented; whereas adolescents, children and older adults were under-represented as shooters in this sample (The CSS, 1991[ii]).<sup>61</sup>

### *Shooters' Employment Status*

The vast majority, 91% (563), of shooters were gainfully employed, but nine per cent (55) were *not* gainfully employed. Considering the employment rate in the background population, gainfully employed people were significantly over-represented as shooters in this sample (The Ministry for Welfare and Population Development, 1995).<sup>62</sup>

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force victims (9) were excluded. See later section on police and PSO homicide victims.

59  $P < 0.01$ ,  $X^2 = 943.39$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 21.93$ ,  $-21.49$ . Treat with caution,  $M = 32\%$  (448).

60  $P < 0.01$ ,  $X^2 = 189.24$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 5.84$ ,  $8.43$ ,  $-9.08$ . Treat with caution,  $M = 40\%$  (561).

61  $P < 0.01$ ,  $X^2 = 630.53$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 16.81$ ,  $-11.3$ ,  $-12.99$ ,  $-7.12$ . Treat with caution,  $M = 35\%$  (481).

62  $P < 0.01$ ,  $X^2 = 794.85$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 22.11$ . Treat with extreme caution,  $M = 55\%$  (761) and the background statistics were national figures for 1995.

### ***Shooters' Law Enforcement Status***

The majority, 54% (447), of shooters were police, but 46% (386) were civilians. Considering their representation in the background population, police were significantly over-represented and civilians under-represented as shooters in this sample (The Commissioner of the SAP, 1990).<sup>63</sup>

Because two per cent (26) of civilian shooters were private security officers (PSOs), overall 56% (473) of shooters were law enforcement officials. Considering the representation of PSOs in the background population,<sup>64</sup> they were significantly over-represented as shooters in this sample (The Commissioner of the SAP, 1990).<sup>65</sup>

### ***Shooters' Police Ranks***

Table 7.7 shows that the majority of police shooters held lower ranks; the two most common ranks being constable and special constable.<sup>66</sup>

**Table 7.7: Police Shooters' Ranks**

Ranks	Frequencies	Percentages
Constable	132	38
Special Constable	51	15
Sergeant	49	14
Warrant Officer	49	14
Detective Sergeant	16	5
Detective Constable	11	3
Lieutenant	10	3
Detective Warrant Officer	8	2
Captain	5	1
Major	1	1

### ***Duty Status of Police Shooters***

The vast majority, 85% (378), of police shooters were on duty, but 15% (68) were off duty.<sup>67</sup>

63  $P < 0.01$ ,  $X^2 = 393.97$ ,  $df = 2$ .  $Fwp < 0.01$ ,  $z = 281.33$ ,  $-15.75$ . Treat with caution,  $M = 40\%$  (550). Defence forces shooters (6) were excluded.

64 PSOs comprised 0.5% of the national population.

65  $P < 0.01$ ,  $X^2 = 9397.2$ ,  $df = 2$ . (for police, PSOs and civilians).  $Fwp < 0.01$ ,  $z = 11$ . Treat with caution,  $M = 48\%$  (820) and the background statistic was a national figure for 1989.

66  $M = 22\%$  (98). No stats. test because accurate expected frequencies were not available.

67  $M = 0.2\%$  (1).



### ***Shooters' Blood-Alcohol Levels***

This variable was excluded from further analysis because 91% (1258) of the data were missing.

***Table 7.8: Shooters' Motives***<sup>68</sup>

Motives	Frequencies	Percentages
Self defence <sup>69</sup>	295	40
Arrest <sup>70</sup>	175	24
Unlawful reason <sup>71</sup>	109	15
Accident	57	8
Lawful reason <sup>72</sup>	51	7
Public safety	16	2
Dispersing gatherings	14	2
Defence of property	12	2
Obedience to orders	2	0.3
Necessity	1	0.1

### **Characteristics of Shooters' Firearms**

#### ***Shooters' Handguns***

The vast majority, 75% (854) of homicides were committed with handguns and only 25% (287) with long-guns.<sup>73</sup>

#### ***Automatic Status of Shooters' Guns***

The majority, 56% (447), of homicides were committed with guns that were *not* automatic, 43% (354) with semi-automatics and two per cent (18) with fully-automatic firearms.<sup>74</sup>

#### ***Shooters' Gun Types***

Table 7.9 shows the majority of homicides were perpetrated with pistols and unspecified handguns.

68 Treat with caution, M = 47% (655). Two shooters gave no motives as they denied involvement.

69 Including 14 defence of another cases.

70 Including 25 prevention of escape cases.

71 Shooter admitted an unspecified unlawful motive for shooting.

72 Shooter claimed an unspecified legal justification for shooting.

73 M = 18% (248).

74 Treat with caution, M = 41% (570).

**Table 7.9: Shooters' Gun Types** <sup>75</sup>

Gun Types	Frequencies	Percentages
Pistol	353	31
Unspecified handgun	322	28
Shotgun	264	23
Revolver	178	16
Assault rifle	17	2
Rifle	5	0.4
Zipgun	1	0.1
Sub-machine rifle	1	0.1

***Shooters' Gun Calibres***

The calibres of guns used to commit homicides ranged from 0.22 to 0.729 inches. Table 7.10 shows the majority of homicides were perpetrated with 9mm firearms and 12 gauge shotguns.

**Table 7.10: Shooters' Gun Calibres** <sup>76</sup>

Calibres	Frequencies	Percentages
9 mm	284	35
0.729 inch	264	32
0.38 inch	134	16
7.65 mm	68	8
0.32 inch	19	2
0.22 inch	19	2
6.35 mm	13	2
0.45 inch	12	2
5.56 mm	4	1
0.44 inch	1	0.1

***Shooters' Ammunition Type***

The vast majority, 81% (1125), of homicides were committed with live bullets, but 19% (264) were perpetrated with non-live ammunition.<sup>77</sup> The following types of non-live ammunition were used: 56% (148) unspecified pellets,<sup>78</sup> 25% (67) birdshot,<sup>79</sup> 18% (48) buckshot,<sup>80</sup> and four per cent (1) rubber bullets.

<sup>75</sup> M = 18% (248).

<sup>76</sup> Treat with caution, M = 41% (571).

<sup>77</sup> M = 0.

<sup>78</sup> Lead pellets ranging from 1.27mm birdshot to 9mm buckshot.

<sup>79</sup> At this time the smallest birdshot was 1.27mm and the largest was 4.57mm.

<sup>80</sup> Comprising large lead pellets between 6 and 9mm.

### ***Shooters' Gun Licence Status***

The majority, 77% (559), of shooters were in legal possession of their guns, but 23% (167) were *not* in lawful possession of the firearms they used.<sup>81</sup>

### **Factors related to Minimum Force**

#### ***Number of Potentially Fatal Shots***

The majority, 56% (464), of shooters fired at least two potentially fatal shots at their victims, but 44% (369) fired single shots.<sup>82</sup>

#### ***Number of Entry-Wounds***

The majority, 62% (766), of victims sustained single entry-wounds, but 38% (462) sustained at least two entry-wounds.<sup>83</sup>

#### ***Shooters Identified as Police***

The majority, 68% (234), of police shooters made victims aware of their law enforcement status prior to firing, but 31% (108) did *not*.<sup>84</sup>

#### ***Oral Warnings***

The majority, 82% (640), of shooters did *not* give their victims oral warning of the intention to shoot, but 18% (143) did issue such warnings.<sup>85</sup>

**Table 7.11: Direction of Warning Shots<sup>86</sup>**

Directions	Frequencies	Percentages
Upward	42	54
Downward	17	22
Sideward	5	6
Backward	1	1
At a Moving Vehicle	1	1

The majority, 81% (639), of shooters did *not* give warning shots before firing at their victims, but 19% (151) did fire warnings.<sup>87</sup> Furthermore the majority, 83% (43), of warning shots did *not* constitute a foreseeable danger to anyone, but 17% (9)

81 Treat with caution, M = 48% (663).

82 Treat with caution, M = 40% (556).

83 M = 1% (9).

84 M = 23% (103), C = 0.2% (2). Unfeasibles (UF) have consistently been treated as positives. UF = 2.

85 Treat with caution, M = 43% (602) and C = 1%. UF = nine per cent (70).

86 M = 15% (12).

87 Treat with caution, M = 43% (594) and C = 1 (5). UF = nine per cent (73).

did endanger others.<sup>88</sup>

### ***Aiming at Victims' Legs***

The majority, 86% (693), of shooters did *not* aim to shoot their victims in the legs, but 14% (109) did aim for the legs.<sup>89</sup>

### ***Parts of Victims' Bodies Wounded Fatally***

Table 7.12 shows the majority of homicide victims sustained fatal entry-wounds in the chest and head.

**Table 7.12: Victims' Body Parts Fatally Wounded <sup>90</sup>**

Body-Parts	Frequencies	Percentages
Chest	397	34
Head	363	31
Back	193	16
Abdomen	100	9
Neck	59	5
Leg <sup>91</sup>	23	2
Arm <sup>92</sup>	15	1
Buttocks	14	1
Shoulder	10	1
Groin	2	0.2

### ***Other Less-than-Lethal Means***

The majority, 64% (511), of shooters did *not* employ other less-than-lethal means before shooting, but 36% (291) did employ at least one such alternative.<sup>93</sup> Table 7.13 shows foot chases were the most common alternate less-than-lethal means employed by these shooters.

88 Treat with caution, M = as 33% (26).

89 Treat with caution, M = 42% (585) and C = 0.1% (2). UF = 11% (84).

90 M = 5% (61).

91 Including feet.

92 Including hands.

93 M = 42% (586), C = 0.1% (1), UF = 3% (48).

**Table 7.13: Other Less-than-Lethal Means <sup>94</sup>**

Alternatives	Frequencies	Percentages
Foot chase	131	42
Abbreviated warning	55	18
Physical struggle	40	12
Car chase	29	9
Took cover	20	6
Signalled	11	4
Fled on foot	7	2
Verbal persuasion	6	2
Fired teargas	6	2
Set up roadblock	2	1
Used police dog	1	0.5
Rammed car with car	1	0.5

**Factors related to Proportionality*****Shooters Foreseeably Endangered Others***

In the majority, 65% (482), of homicides the shooters foreseeably endangered others by firing at their victims, but in 35% (256) they did *not* foreseeably endanger others.<sup>95</sup>

***Whether Victims were Armed***

The majority, 60% (417), of homicide victims were completely *unarmed*, whereas 40% (282) were armed with some kind of weapon.<sup>96</sup> The majority, 73% (205), of *armed* homicide victims had weapons other than guns, whereas 27% (77) were armed with firearms.<sup>97</sup> Table 7.14 shows that knives were the most common type of weapon among homicide victims.

94 Treat with caution, M = 42% (520) and C = 0.1% (1). UF = 48. Including all other means.

95 Treated with caution, M = 47% (651).

96 Treat with caution, M = 34% (525) and C = 2% (13).

97 M = 0.

**Table 7.14: Victims' Weapon Types<sup>98</sup>**

Weapons	Frequencies	Percentages
Knife	87	35
Gun	77	30
Stones	32	13
Petrol-bomb	10	4
Unbroken Bottle	6	2
Sharp piece of metal	6	2
Panga <sup>99</sup>	5	2
Screwdriver	5	2
Axe	4	2
Pitch fork	4	2
Length of pipe	4	2
Hand-grenade	2	1
Knobkerrie <sup>100</sup>	2	1
Broken bottle	1	0.4
Hammer	1	0.4
Pliers	1	0.4
Garden spade	1	0.4

***Armed Victims' Handguns***

The majority, 74% (57), of homicide victims who were armed with firearms had handguns, but 14% (11) had long-guns.<sup>101</sup>

***Automatic Status of Armed Victims' Guns***

The majority, 60% (31), of homicide victims who were armed with guns had semi-automatic firearms, but 38% (20) had guns that were *not* automatic and two per cent (1) had fully-automatics.<sup>102</sup>

***Armed Victims' Gun Types***

Table 7.15 shows pistols were the most common type of firearm among armed homicide victims.

98 Treat with caution, M = 34% (525) and C = 17% (34).

99 A tool with a curved metal blade generally used for cutting vegetation.

100 A stick with a solid spherical handle.

101 Treat with caution, M = 34% (525) and C = 12% (9).

102 Treat with caution, M = 16% (12) and C = 17% (13).

**Table 7.15: Victims' Gun Types<sup>103</sup>**

Gun Types	Frequencies	Percentages
Pistol	30	44
Unspecified handgun	15	22
Revolver	10	15
Shotgun	9	13
Airgun	1	1
Rifle	1	1
Zipgun	1	1
Assault rifle	1	1

***Armed Victims' Gun Calibres*****Table 7.16: Victims' Gun Calibres<sup>104</sup>**

Calibres	Frequencies	Percentages
9 mm	19	42
0.729 inch	9	20
0.38 inch	6	13
7.65 mm	5	11
0.22 inch	3	4
6.35 mm	2	4
0.32 inch	1	2

***Armed Victims' Ammunition Type***

The majority, 85% (58), of victims' guns were loaded with live bullets, but 15% (10) had non-live ammunition.<sup>105</sup>

***Armed Victims' Gun Licence Status***

The majority, 53% (26), of armed homicide victims were in legal possession of their weapons, but 47% (23) were *not* in lawful possession of their guns.<sup>106</sup>

***Whether Victims Threatened Anyone***

The majority, 58% (389), of homicide victims did *not* threaten anyone, but 42% (286) did threaten others.

103 Treat with caution, M = 34% (525) and C = 12% (9).

104 Treat with caution, M = 25% (19) and C = 17% (13).

105 Treat with caution, M = 34% (525) and C = 12% (9).

106 Treat with caution, M = 20% (15) and C = 17% (13).

**Table 7.17: Victims' Armed Threats<sup>107</sup>**

Threats	Frequencies	Percentages <sup>108</sup>
Threatened with weapon	150	34
Threw stones	59	13
Shot	27	6
Stabbed	20	5
Threw explosive	9	2
Drove recklessly <sup>109</sup>	8	2
Hit with weapon	6	1
Drew weapon	3	0.5

Tables 7.17 and 7.18 show the majority, 64% (282), of homicide victims who threatened made armed threats.<sup>110</sup>

**Table 7.18: Victims' Unarmed Threats**

Threats	Frequencies	Percentages <sup>111</sup>
Part of hostile group	80	18
Physical struggle	47	11
Verbal threats	14	3
Sudden movement	7	2
Foot chase	6	1
Cornered	2	0.5
Pushed from height	1	0.2
Pushed from moving vehicle	1	0.2

Threatening with a weapon and throwing stones were the two most common armed threats whereas being part of a hostile group and engaging in physical struggle were the two most common unarmed threats.<sup>112</sup>

### ***Whether Victims Fled***

The majority, 68% (489), of homicide victims were *not* fleeing when shot, but 32% (228) were fleeing.<sup>113</sup>

107 Treat with caution, M = 34% (529) and C = 2% (33).

108 Calculated out of 440.

109 Alpert & Fridell (1992) have argued that a vehicle can be a deadly weapon.

110 M = 0.

111 Calculated out of 440.

112 Treat with caution, M = 34% (529).

113 Treat with caution, M = 41% (510) and C = 1% (10).



### ***Sides of Victims' Bodies Wounded Fatally***

The majority, 55% (583), of homicide victims sustained fatal entry-wounds in the front of the body, but 26% (279) were wounded in the back and 19% (207) in the side.<sup>114</sup>

### ***Whether Victims' were Suspects/Convicts***

The majority, 63% (462), of homicide victims were suspected of at least one criminal offence when shot, but 37% (275) were neither suspects nor convicts.<sup>115</sup> Table 7.19 shows the majority, 54% (248), of homicide victims who were suspects/convicts were suspected of violent offences, but 46% (214) were suspected of non-violent offences.<sup>116</sup>

**Table 7.19: Victims' Most Serious Suspected Offences<sup>117</sup>**

Types of Offences <sup>118</sup>		Frequencies	Percentages
*	Assault	99	21
	Theft <sup>119</sup>	80	17
*	Public violence	72	16
*	Robbery	48	10
	Unspecified offence	42	9
	Burglary	36	8
	Illegal gathering	26	6
*	Attempted murder	13	3
*	Murder	9	2
	Obstructing justice	8	2
	Trespassing	7	2
*	Arson	4	1
	Malicious damage to property	4	1
	Drug dealing	3	1
	Escaping from custody	2	0.4
	Illegal possession of guns	2	0.4
*	Abduction	1	0.2
*	Attempted rape	1	0.2
	Selling stolen property	1	0.2
	Fraud	1	0.2
	Illegal possession of drugs	1	0.2
	Reckless driving	1	0.2
*	Terrorism	1	0.2

Assault, public violence and robbery were the three most common violent offences whereas theft, burglary and participating in illegal gatherings were the three most

<sup>114</sup> M = 14% (168).

<sup>115</sup> Treat with caution, M = 39% (483) and C = 1% (17).

<sup>116</sup> M = 0.

<sup>117</sup> M = 0.

<sup>118</sup> Asterisks (\*) indicate violent offences.

<sup>119</sup> Car theft 35% (28).

common non-violent offences.

### ***Whether Victims were Dangerous***

The majority, 67% (512), of homicide victims were *not* likely to have been dangerous to others if they had not been shot, but 33% (247) were likely to have been dangerous.<sup>120</sup>

### ***Whether Victims Endangered Life***

The majority, 79% (531), of homicide victims did *not* endanger the lives of others, but 21% (244) did pose a significant threat to life.<sup>121</sup>

## **Characteristics of the Legal Process**

### ***Highest Courts***

The majority, 83% (809), of homicide cases were heard by inquest courts, but 16% (159) were tried in criminal courts and one per cent (11) were heard in *both* inquest and criminal courts.<sup>122</sup> This means that in 83% (809) of homicides an inquest court was the highest court and in 17% (170) a criminal court was the highest court to consider each case.<sup>123</sup>

### ***Types of Inquests***

The vast majority, 86% (698), of homicide cases that went no further than inquests were heard as *informal* proceedings and 14% (111) as formal proceedings. In other words, in 86% (698) of homicide cases the highest court findings were made at informal inquests and 14% (111) at formal inquests.<sup>124</sup>

### ***Types of Criminal Courts***

The majority, 68% (116), of homicide cases that were brought to criminal trial were heard in the Supreme Court and 32% (54) in the lower Regional Magistrates' Courts. Overall, 12% (116) of homicide cases were considered in the Supreme Court and five per cent (54) in the Regional Magistrates' Courts.<sup>125</sup>

120 Treat with caution, M = 46% (569) and C = 5%.

121 Treat with caution, M = 45% (562).

122 M = 21% (258).

123 Overall, 66% (820) inquests and 14% (170) criminal trials.

124 M = 0.

125 M = 0.

**Table 7.20: Highest Legal Proceeding**

Proceedings	Frequencies	Percentages
Informal inquest	698	72
Supreme Court criminal trial	116	12
Formal inquest	111	11
Regional Court criminal trial	54	5

**Lawfulness**

The Courts found the majority, 54% (389), of homicide cases to be lawful, but 46% (334) were ruled unlawful.<sup>126</sup> In addition, the Courts were unable to reach a finding on lawfulness in 26% (256) of cases. When this figure is included the relative proportions become: 40% (389) lawful, 34% (334) unlawful and 26% (256) undetermined.<sup>127</sup>

**Legal Classifications**

Generally, when an inquest or criminal court finds a homicide lawful, the type of legal justification is also specified in the Court's finding, e.g. self defence, effecting an arrest. Similarly, when a criminal court finds a homicide unlawful, the type of criminal offence and the guilty party is stipulated, e.g. murder by Mr X. By contrast, an inquest court must decide only whether a death is lawful or unlawful and is not required to find anyone criminally liable for a death, or to decide what type of criminal offence has been committed (The Inquest Act 58 of 1959, as amended).

**Table 7.21: Classifications for Justifiable Homicides**

Legal Classifications	Frequencies	Percentages
Self defence <sup>128</sup>	165	42
Arrest <sup>129</sup>	142	37
Unspecified lawful <sup>130</sup>	45	12
Unintentional shootings	13	3
Public safety	13	3
Defence of property	4	1
Dispersing illegal gathering	3	1
Obedience to orders	3	1
Necessity	1	0.3

126 M = 21% (258). Excluding undetermined cases.

127 M = 21% (258).

128 Including seven cases of defence of another.

129 Including 12 cases of preventing escape.

130 Lawful but no legal justification specified (common for inquest courts).

Table 7.21 shows that self defence and arrest were the two most common types of justifiable homicide, which together comprised 79% (307) of the lawful homicides in this sample.<sup>131</sup>

**Table 7.22: Classifications for Criminal Homicides**

Legal Classifications	Frequencies	Percentages
Unspecified unlawful <sup>132</sup>	228	68
Murder	73	22
Culpable homicide	32	10
Attempted murder <sup>133</sup>	1	0.3

Table 7.22 indicates the Courts found most, 68% (228), unlawful shootings to be unspecified criminal homicides.<sup>134</sup>

### ***Shooters Charged***

The majority, 80% (880), of shooters were not charged, but criminal charges were brought against 20% (221).<sup>135</sup> The vast majority, 90% (199), of those charged faced murder charges and only 10% (22) were charged with culpable homicide.

### ***Shooters Prosecuted***

The vast majority, 86% (190), of shooters who were charged were also prosecuted, but 14% (31) had charges withdrawn.<sup>136</sup>

### ***Shooters Legally Represented***

The vast majority, 97% (185),<sup>137</sup> of shooters who were prosecuted were legally represented at their trials and only one per cent (2) were *not* legally represented.<sup>138</sup> Most, 70% (130), were represented by state-appointed defence counsel, but 30% (55) were represented by private defence counsel.<sup>139</sup>

<sup>131</sup> M = 21% (258).

<sup>132</sup> Unlawful but no offence specified (common for inquest courts).

<sup>133</sup> Here the Court convicted the shooter *before* the victim died.

<sup>134</sup> M = 21% (258).

<sup>135</sup> M = 21% (286).

<sup>136</sup> M = 21% (286). Reasons for withdrawal of charges were not provided.

<sup>137</sup> Expected given the severity of the charges.

<sup>138</sup> M = 2% (3). Both accused who were *not* represented were acquitted.

<sup>139</sup> At the time, if an accused was charged with a capital offence and could not afford legal counsel, the State was obliged to provide this service (The Criminal Procedure Act 51 of 1977).

### ***Shooters Convicted***

The majority, 68% (129), of shooters prosecuted were also convicted of at least one criminal offence, but 32% (61) were acquitted of all charges against them.<sup>140</sup>

**Table 7.23: Types of Convictions**

Types of Convictions	Frequencies	Percentages
Murder	82	64
Culpable homicide	34	26
Illegal possession	8	6
Unlawful shooting	4	3
Attempted murder	1	1

Table 7.23 indicates murder was the most common, 64% (82), criminal conviction.<sup>141</sup> However, six per cent (8) of accused were *not* found to be criminally liable for killing their victims, but were instead convicted of illegally possessing firearms and ammunition. Overall, 63% (121) of shooters who were prosecuted were held criminally liable for killing. But this amounts to only nine per cent of the total number of shooters involved in these homicides. Furthermore, the majority, 66% (253), who perpetrated *criminal* homicides were never brought to justice, mainly because they were not identified or traced by the police 91% (230).<sup>142</sup> Nine per cent (23) could not be prosecuted because they died during or shortly after the shooting.

### ***Shooters' Sentences***

Table 7.24 shows imprisonment was the most common type of sentence handed down to convicted shooters.<sup>143</sup> The effective prison sentences ranged from one year to life imprisonment, with the average term being 11 years, the median eight years and the mode 15 years.<sup>144</sup> Fines ranged from 100 to 5000 rand, with the average being 950 rand, the median 675 rand and the mode 500 rand.

<sup>140</sup> M = 0.

<sup>141</sup> M = 0.

<sup>142</sup> As at December 1995.

<sup>143</sup> M = 0.

<sup>144</sup> M = 18% (14). Prison time after taking into account concurrent and consecutive sentences.

Table 7.24: Types of Sentences

Types of Sentences	Frequencies	Percentages
Imprisonment	77	60
Suspended sentence	18	14
Death sentence <sup>145</sup>	18	14
Fine	12	9
Community service	2	2
Corporal punishment <sup>146</sup>	1	1
Financial compensation	1	1

More specifically, shooters convicted of *murder* were sentenced as follows: 73% (60) imprisonment,<sup>147</sup> 22% (18) death and five per cent (4) fully suspended sentences. Since extenuating circumstances were found for most, 78% (64), of the murder convicts, only a minority were sentenced to death. Furthermore, one death sentence was subsequently commuted to life imprisonment on appeal, and another was overturned resulting in a complete acquittal.

The shooters convicted of *culpable homicide* were sentenced as follows: 44% (15) imprisonment, 29% (10) fully suspended sentences, 15% (5) fines, six per cent (2) community service, three per cent (1) corporal punishment and three per cent (1) were ordered to pay financial compensation to their victims' dependents. One of these convicts was subsequently acquitted on appeal. The shooter convicted of attempted murder received a prison sentence, and the four convicted of unspecified criminal homicides were sentenced as follows: 75% (3) fully suspended sentences and 25% (1) imprisonment. The eight shooters convicted of illegal possession were sentenced as follows: 88% (7) fines and 12% (1) fully suspended sentences.

### ***Shooters Appealed***

The majority, 67% (85), of convicted shooters did *not* apply for leave to appeal against their convictions or sentences, but 33% (42) applied for leave to appeal.<sup>148</sup> Although most, 69% (29), applicants were refused leave to appeal, 31% (13) were granted leave. In the majority, 67% (6), of appeals no changes were made, but 22% (2) who appealed had their convictions overturned and 11% (1) had a death sentence commuted to life imprisonment.<sup>149</sup>

<sup>145</sup> At the time death by hanging was still a lawful form of punishment, but in 1995 capital punishment was declared unconstitutional.

<sup>146</sup> Whipping.

<sup>147</sup> Usually life.

<sup>148</sup> M = 1% (2). At the time the right to appeal was not automatic, although this is now the case.

<sup>149</sup> Treat with caution, M = 31% (4) and the figures may have changed since December 1995.

## SELECTED ADDITIONAL ANALYSES

### Police Officers as Homicide Victims

#### *Areas*

The majority, 55% (22), of police homicide victims were shot while in African residential areas, but 23% (9) were shot in coloured areas, 13% (5) in white areas, five per cent (2) in racially mixed areas and five per cent (2) in non-residential areas.<sup>150</sup>

#### *Political Motivation*

The vast majority, 84% (26), of police victims were killed in shootings that were *not* politically motivated, but 16% (5) were killed in politically motivated shootings.<sup>151</sup>

#### *Police Victims' Sexes*

The large majority, 98% (39), of police homicide victims were male; only two per cent (1) were female. Considering the composition of the background population, males were significantly over-represented and females under-represented among police homicide victims in this sample (The CSS, 1991[ii]).<sup>152</sup> This finding was expected given the male dominated composition of the police force, and the fact that female officers were generally relegated to office-based activities (The Commissioner of the SAP, 1991 to 1984).

#### *Police Victims' Race-Groups*

The highest proportion, 48% (19), of police homicide victims were African, but 28% (11) were coloured, 22% (9) were white and two per cent (1) were Asian. Considering the composition of the background population, Africans were significantly over-represented among police homicide victims in this sample (The CSS, 1991[iii]).<sup>153</sup> Also, given the composition of the SAP at the time, African and coloured officers were over-represented and white officers under-represented as homicide victims in this sample (The Commissioner of the SAP, 1991 to 1984).<sup>154</sup>

#### *Police Victims' Age-Groups*

All (40) police homicide victims were at least 18 years of age.<sup>155</sup>

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150 M = 0.

151 M = 23% (9).

152 M = 0. P < 0.01, X<sup>2</sup> = 36.1, df = 1. Fwp < 0.01, z = 4.25, -4.25.

153 M = 0. P < 0.01, X<sup>2</sup> = 20.73, df = 3. Fwp < 0.01, z = 3.89.

154 On average: 51% white, 39% African, 7% coloured and 3% Asian.

155 M = 0. No stats. tests because all police were expected to be at least 18.

### ***Police Victims' Ranks***

Table 7.25 shows that most police homicide victims held the lowest rank of Special Constable.

**Table 7.25: Police Victims' Ranks<sup>156</sup>**

Ranks	Frequencies	Percentages
Special Constable	22	58
Constable	11	29
Sergeant	3	8
Warrant Officer	1	3
Detective Constable	1	3

### ***Police Victims' Duty Status***

The majority, 53% (20), of police homicide victims were off duty when killed, but 47% (18) were on duty.<sup>157</sup>

### ***Shooters' Sexes***

All (33) shooters who killed police officers were male. Considering the composition of the background population, males were significantly over-represented and females under-represented as shooters of police victims (The CSS, 1991[ii]).<sup>158</sup>

### ***Shooters' Race-Groups***

The majority, 61% (19), of shooters who killed police officers were African, but 29% (9) were coloured and 10% (3) were white. Considering the composition of the background population, Africans were significantly over-represented as shooters of police victims (The CSS, 1991[ii]).<sup>159</sup>

### ***Shooters' Age-Groups***

All (32) shooters who killed police officers were adults. Considering the age distribution in the background population, adolescents were significantly under-represented as shooters of police officers in this sample (The CSS, 1991[ii]).<sup>160</sup>

<sup>156</sup>  $M = 5\%$  (2). No stats. test, because expected frequencies could not be accurately calculated.

<sup>157</sup>  $M = 5\%$  (2).

<sup>158</sup>  $M = 27\%$  (12).  $P < 0.01$ ,  $X^2 = 35.06$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 4.25$ ,  $-4.12$ .

<sup>159</sup>  $P < 0.01$ ,  $X^2 = 35.06$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 5.3$ . Treat with caution,  $M = 31\%$  (14).

<sup>160</sup>  $P < 0.01$ ,  $X^2 = 22.72$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = -3.18$ . Treat with caution,  $M = 29\%$  (13).



### ***Shooters' Police Status***

The majority, 74% (17), of shooters who killed police were civilians, but 26% (6) were police officers. Considering the numbers in the background population, police were over-represented as shooters of police victims in this sample (The Commissioner of the SAP, 1990).<sup>161</sup>

### ***Lawfulness***

The Courts found the bulk, 61% (17), of homicides involving police victims to be unlawful, but in 21% (6) of these cases lawfulness was *not* determined and 18% (5) were found to be lawful.<sup>162</sup>

### ***Legal Classifications***

Table 7.26 shows the highest proportion, 55% (12), of homicides involving police victims were classified as unspecified criminal homicides.<sup>163</sup>

**Table 7.26: Legal Classifications for Homicides involving Police Victims**

Classifications	Frequencies	Percentages
Unlawful Unspecified	12	55
Murder	4	18
Self Defence	3	14
Culpable Homicide	1	4
Arrest	1	4
Accident	1	4

### **Private Security Officers as Homicide Victims**

#### ***Representation in Sample***

PSOs comprised only a small minority, two per cent (29), of homicide victims, whereas 94% (1159) were civilians who were *not* employed in law enforcement, three per cent (40) were police officers and one per cent (9) were members of the national defence forces. Considering the estimated number of PSOs in the background population, they were significantly over-represented as homicide victims in this sample (The Commissioner of the SAP, 1990).<sup>164</sup>

<sup>161</sup> Treat with caution,  $M = 49\%$  (22).

<sup>162</sup> Treat with caution,  $M = 30\%$  (12).

<sup>163</sup>  $M = 30\%$  (12). Excluding undetermined homicides.

<sup>164</sup> Treat with caution,  $M = 48\%$  (820).  $P < 0.01$ ,  $X^2 = 415.03$ ,  $df = 2$ .  $Fwp < 0.01$ ,  $z = 9.39$ .

### ***Areas***

The highest proportion, 41% (12), of PSO homicide victims were shot while in African residential areas, whereas 38% (11) were in coloured areas, 14% (4) in white areas, three per cent (1) in racially mixed areas and three per cent in non-residential areas.<sup>165</sup>

### ***Political Motivation***

The majority, 59% (16), of PSO homicides were *not* politically motivated, but 41% (11) were politically motivated.<sup>166</sup>

### ***PSO Victims' Sexes***

All (29) PSO homicide victims were male. Considering the composition of the background population, males were significantly over-represented and females under-represented among PSO homicide victims in this sample (The CSS, 1991[ii]).<sup>167</sup> Since this appears to have been a male dominated occupation, such a finding was not noteworthy.

### ***PSO Victims' Race-Groups***

The majority, 52% (15), of PSO homicide victims were African, whereas 45% (13) were coloured and three per cent (1) were white. Considering the composition of the background population, Africans were significantly over-represented among PSO homicide victims in this sample (The CSS, 1991[ii]).<sup>168</sup>

### ***PSO Victims' Age-Groups***

All (29) PSO homicide victims were adults.<sup>169</sup>

### ***PSO Victims' Duty Status***

The majority, 72% (13), of PSO homicide victims were on duty when shot, but 28% (5) were off duty.<sup>170</sup>

### ***Characteristics of Shooters:***

#### ***Shooters' Sexes***

All (21) shooters who killed PSOs were male. Considering the composition of the background population, males were significantly over-represented and females

165 Treat with caution,  $M = 48\%$  (820) for background variable (bv).

166 Treat with caution,  $Mbv = 48\%$  (820) and  $M = 7\%$  (2).

167 Treat with caution,  $Mbv = 48\%$  (820) and  $M = 0$ .  $P < 0.01$ ,  $X^2 = 31.07$ ,  $df = 1$ .  $Fwp < 0.01$ ,  $z = 3.74$ ,  $-3.87$ .

168 Treat with caution,  $Mbv = 48\%$  (820) and  $M = 0$ .  $Fwp < 0.01$ ,  $z = 3.67$ .  $P < 0.01$ ,  $X^2 = 20.19$ ,  $df = 3$ .  $M = 0$ .

169 No stats tests because PSOs were adults by definition.

170 Treat with extreme caution,  $Mbv = 48\%$  (820) and  $M = 38\%$  (11).

under-represented as shooters of PSOs in this sample (The CSS 1991[ii]).<sup>171</sup>

### ***Shooters' Race-Groups***

The majority, 58% (11), of shooters who killed PSOs were African, but 32% (6) were coloured and 10% (2) were white. Considering the composition of the background population, Africans were significantly over-represented as shooters of PSOs in this sample (The CSS, 1991[ii]).<sup>172</sup>

### ***Shooters' Age-Groups***

All (20) shooters who killed PSOs were adults.<sup>173</sup>

### ***Shooters' Police Status***

The majority, 79% (15), of shooters who killed PSOs were civilians, but 16% (3) were police officers and five per cent (1) were members of the defence forces.<sup>174</sup>

### ***Characteristics of the Legal Process:***

#### ***Lawfulness***

The highest proportion, 50% (12), of homicides involving PSO victims were found to be unlawful, but 42% (10) were *not* determined and eight per cent (2) were found to be lawful.<sup>175</sup>

### ***Legal Classifications***

Table 7.27 shows the highest proportion of homicides involving PSO victims were classified as undetermined homicides.<sup>176</sup>

**Table 7.27: Legal Classifications for Homicides involving PSO Victims**

Classifications	Frequencies	Percentages
Undetermined	10	42
Unlawful Unspecified	6	25
Murder	4	17
Culpable Homicide	2	8
Arrest	2	8

171 Treat with caution,  $M = 28\%$  (8).  $P < 0.01$ ,  $X^2 = 23.1$ ,  $df = 1$ .  
Fwp  $< 0.01$ ,  $z = 3.48$ ,  $-3.31$ .

172 Treat with caution,  $M = 34\%$  (10).  $P < 0.01$ ,  $X^2 = 15.65$ ,  $df = 3$ .  
Fwp  $< 0.01$ ,  $z = 3.5$ .

173 Treat with caution,  $M = 31\%$  (9).  $P < 0.01$ ,  $X^2 = 10.77$ ,  $df = 1$ , but the std. resids. were not significant.

174 Treat with caution,  $M = 34\%$  (10).  $P > 0.01$ ,  $X^2 = 4.22$ ,  $df = 1$  (not significant).

175  $M = 17\%$  (5).

176  $M = 17\%$  (5).

**Self Defence Cases**<sup>177</sup>**Years****Table 7.28: Self Defence Cases by Years, 1984 - 1991**<sup>178</sup>

Years	Frequencies	Percentages	Est. Rates per 100000	<sup>179</sup>
1984	11	7	1	
1985	44	27	3	
1986	25	15	2	
1987	16	10	1	
1988	14	9	1	
1989	18	11	1	
1990	23	14	1	
1991	14	9	1	

**Political Motivation**

The majority, 75% (117), of self defence cases were *not* politically motivated, but 25% (40) were politically motivated.<sup>180</sup>

**Areas**

The highest proportion, 40% (66), of self defence cases occurred in coloured residential areas, but 36% (59) occurred in African areas, 16% (27) in white areas, six per cent (10) in racially mixed areas and one per cent (2) in non-residential areas.<sup>181</sup>

**Places**

The majority, 68% (108), of self defence cases occurred out-of-doors, but 23% (37) took place indoors, four per cent (7) in vehicles, four per cent (6) in victims' homes and one per cent (2) in victims' work-places.<sup>182</sup>

**Characteristics of Victims:****Victims' Sexes**

The vast majority, 99% (164), of self defence victims were male; only one per cent (1) were female. Considering the sex ratio of the background population, males

177 Self defence and defence of another cases combined: 165 cases involving 197 shooters.

178 M = 0.

179 Based on the estimated population of Cape Town.

180 M = 5% (8).

181 M = 1% (1).

182 M = 3% (5).

were significantly over-represented and females under-represented as victims of self defence (The CSS, 1991[ii]).<sup>183</sup>

### ***Victims' Race-Groups***

The majority, 53% (88), of self defence victims were coloured, but 45% (74) were African, one per cent (2) were Asian and one per cent (1) were white. Considering the racial composition of the background population, Africans were significantly over-represented and whites under-represented as self defence victims (The CSS, 1991[ii]).<sup>184</sup>

### ***Victims' Age-Groups***

The majority, 83% (137), of self defence victims were adults, but 15% (25) were adolescents, one per cent (2) were older adults and one per cent (1) were children. Considering the age distribution in the background population, adults were significantly over-represented, whereas children and older adults were under-represented as self defence victims (The CSS, 1991[ii]).<sup>185</sup>

### ***Victims' Employment Status***

The majority, 60% (68), of self defence victims were *not* gainfully employed, but 40% (46) were gainfully employed.<sup>186</sup>

### ***Victims' Police Status***

The majority, 98% (162), of self defence victims were civilians, but two per cent (3) were police officers. Significantly more civilians and fewer police officers than expected were self defence victims.<sup>187</sup>

## ***Characteristics of Shooters:***

### ***Shooters' Sexes***

In self defence cases the vast majority, 99% (194), of shooters were male; only one per cent (3) were female. Considering the sex ratio in the background population, males were significantly over-represented and females under-represented as shooters in self defence cases (The CSS, 1991[ii]).<sup>188</sup>

183  $M = 0$ .  $P < 0.01$ ,  $X^2 = 175.47$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 9.56$ ,  $-9.17$ .

184  $M = 0$ .  $P < 0.01$ ,  $X^2 = 100.68$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 7.72$ ,  $-6.4$ .

185  $M = 0$ .  $P < 0.01$ ,  $X^2 = 62.43$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 4.82$ ,  $-5.39$ ,  $-3.05$ .

186  $M = 31\%$  (51).  $P > 0.01$ ,  $X^2 = 0.34$ ,  $df = 1$  (not significant). Treat with caution, the background statistics were national figures for 1995.

187  $M = 0$ .  $P < 0.01$ ,  $X^2 = 152.3$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 8.76$ ,  $-8.76$ . Duty status not analysed; only three cases.

188  $M = 0$ .  $P < 0.01$ ,  $X^2 = 191.09$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 9.85$ ,  $-9.7$ .

### ***Shooters' Race-Groups***

In self defence cases the highest proportion, 49% (96), of shooters were white, but 27% (53) were coloured, 21% (41) were African and three per cent (5) were Asian. Considering the racial composition of the background population, whites were significantly over-represented and coloureds under-represented as shooters in self defence cases (The CSS, 1991[ii]).<sup>189</sup>

### ***Shooters' Age-Groups***

In self defence cases the majority, 99% (194), of shooters were adults, but one per cent (2) were older adults. Considering the age composition of the background population, adults were significantly over-represented, whereas adolescents, children and older adults were under-represented as shooters in self defence cases (The CSS, 1991[ii]).<sup>190</sup>

### ***Shooters' Employment Status***

In self defence cases the majority, 99% (180), of shooters were gainfully employed, but one per cent (2) were *not* gainfully employed. Considering the rate of employment in the background population, gainfully employed people were significantly over-represented as shooters in self defence cases (The Ministry for Welfare and Population Development, 1995).<sup>191</sup>

### ***Shooters' Police Status***

In self defence cases the majority, 66% (131), of shooters were police officers, but 34% (66) were civilians.<sup>192</sup> There were significantly more police and fewer civilian shooters than expected in self defence cases.<sup>193</sup>

### ***Characteristics of Shooters' Firearms:***

#### ***Shooters' Handguns***

The majority, 61% (119), of self defence shootings were committed with handguns, but 39% (76) were perpetrated with long-guns.<sup>194</sup>

#### ***Automatic Status of Shooters' Guns***

The majority, 63% (119), of self defence shootings were committed with guns that were *not* automatic, 36% (69) with semi-automatics and one per cent (2) with fully-

189 M = 1% (2). P < 0.01, X<sup>2</sup> = 70.39, df = 3. Fwp < 0.01, z = 6.3, -5.07.

190 M = 1% (1). P < 0.01, X<sup>2</sup> = 152.73, df = 3. Fwp < 0.01, z = 8.28, -5.91, -6.09, -3.5.

191 M = 8% (15). P < 0.01, X<sup>2</sup> = 287.6, df = 1. Fwp < 0.01, z = 13.36, -10.53. Treat with caution, the background statistics were national figures for 1995.

192 Including 10 PSOs.

193 M = 0. P < 0.01, X<sup>2</sup> = 21.34, df = 1. Fwp < 0.01, z = 3.28, -3.28.

194 M = 1% (2).

automatic firearms.<sup>195</sup>

### ***Shooters' Gun Licence Status***

In self defence cases the majority, 93% (177), of shooters were in legal possession of their firearms, but seven per cent (13) were *not* in lawful possession.<sup>196</sup>

### ***Factors related to Minimum Force:***

#### ***Number of Potentially Fatal Shots***

In self defence cases the majority, 64% (118), of shooters fired at least two potentially fatal shots at their victims, but 36% (67) fired single shots.<sup>197</sup>

#### ***Number of Entry-Wounds***

In self defence cases the majority, 51% (84) of victims sustained single entry-wounds, but 49% (81) sustained at least two entry-wounds.<sup>198</sup>

#### ***Whether Shooters Identified themselves as Police Officers***

In self defence cases the majority, 73% (94), of police shooters made their victims aware of their law enforcement status before shooting, but 27% (34) did *not*.<sup>199</sup>

#### ***Oral Warnings***

In self defence cases the majority, 75% (144), of shooters did *not* give their victims oral warning of the intention to shoot, but 25% (47) did issue such warnings.<sup>200</sup>

#### ***Warning Shots***

In self defence cases the majority, 73% (140), of shooters did *not* fire warning shots before shooting at their victims, but 27% (53) did fire warning shots.<sup>201</sup>

#### ***Aiming at Victims' Legs***

In self defence cases the majority, 88% (172), of shooters did *not* aim to shoot victims' in the legs; only 12% (23) did so.<sup>202</sup>

#### ***Other Less-than-Lethal Means***

In self defence cases the majority, 64% (128), of shooters did *not* employ other less-than-lethal means before shooting, but 36% (66) did use such alternatives. The three most common less-than-lethal alternatives were: foot chases (10%), taking cover

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195 M = 4% (7).

196 M = 4% (7).

197 M = 6% (12).

198 M = 0.

199 M = 2% (3), UF = 0.

200 M = 3% (6), UF = 23.

201 M = 2% (4), UF = 27.

202 M = 1% (2), UF = 17.

(8%) and physical struggle (7%).<sup>203</sup>

***Factors related to Proportionality:***

***Shooters Foreseeably Endangered Others***

In the majority, 59% (108), of the self defence cases shooters foreseeably endangered others by firing at their victims, but in 41% (76) they did *not* foreseeably endanger others.<sup>204</sup>

***Whether Victims were Armed***

In self defence cases the majority, 87% (141), of victims were armed, but in 13% (21) victims were unarmed.<sup>205</sup>

***Armed Victims' Weapon Types***

In self defence cases the majority, 84% (118), of armed victims had weapons other than guns; only 16% (23) had firearms.<sup>206</sup>

***Armed Victims' Handguns***

In self defence cases the majority, 91% (21), of victims' firearms were handguns; only nine per cent (2) were long-guns.<sup>207</sup>

***Automatic Status of Armed Victims' Guns***

In self defence cases the majority, 59% (10), of victims' firearms were semi-automatic, but 35% (6) were *not* automatic and six per cent (1) were fully-automatic.<sup>208</sup>

***Armed Victims' Gun Licence Status***

In self defence cases the majority, 82% (9), of victims were *not* in legal possession of their guns, but 18% (2) were in lawful possession.<sup>209</sup>

***Whether Victims Threatened Anyone***

In self defence cases the majority, 97% (185), of victims threatened someone, but interestingly, three percent (6) did not actually threaten anyone. The three most common threats were: threatening with a weapon (41%), throwing stones (18%) and being part of a hostile group (15%).<sup>210</sup>

203 M = 2% (3). UF = 10.

204 M = 7% (13).

205 M = 7% (14) and C = 11% (21).

206 M = 0.

207 M = 8% (16) and C = 1% (2).

208 M = 17% (4) and C = 9% (2).

209 Treat with extreme caution, M = 43% (10) and C = 9% (2).

210 M = 2% (4) and C = 1% (2).



### ***Whether Victims Fled***

In self defence cases the majority, 80% (146), of victims were *not* fleeing when shot, but a rather substantial 20% (36) were fleeing.<sup>211</sup>

### ***Sides of Victims' Bodies Wounded Fatally***

In self defence cases the majority, 61% (99), of victims sustained fatal entry-wounds in the front of the body, 20% (33) were wounded in the side and 19% (31) in the back.<sup>212</sup>

### ***Whether Victims were Suspects/Convicts***

In self defence cases the majority, 82% (155), of victims *were* suspected of at least one criminal offence, but 18% (35) were neither suspects nor convicts. The three most common offences were: assault (31%), public violence (19%) and robbery (19%).<sup>213</sup>

### ***Whether Victims were Dangerous***

In self defence cases the majority, 80% (132), of victims *were* likely to have been dangerous if they had not been shot, but 20% (32) were *not* likely to have been dangerous.<sup>214</sup>

### ***Whether Victims Endangered Life***

In self defence cases the majority, 75% (143), of victims did *not* endanger the lives of others, but 25% (48) did pose a significant threat to life. The three most common threats to life were: hostile groups (57%), shootings (20%) and stabbings (12%).<sup>215</sup>

### ***Characteristics of the Legal Process:***

#### ***Highest Courts***

The majority, 93% (153), of self defence cases were heard by inquest courts, but only seven per cent (14) were tried in criminal courts.<sup>216</sup>

#### ***Types of Inquests***

The majority, 75% (115), of self defence cases that went to inquest were heard as *informal* inquests, but only 25% (38) were heard as formal inquests.<sup>217</sup>

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211 M = 3% (6) and C = 5% (9).

212 M = 1% (2).

213 M = 2% (3) and C = 2% (4).

214 M = 1% (2) and C = 16% (31).

215 M = 2% (4) and C = 1% (2).

216 M = 0.

217 M = 0.

### ***Types of Criminal Courts***

The majority, 54% (7), of self defence cases that went to criminal trial were heard in the Supreme Court, but 46% (5) were heard in the lower Regional Magistrates' Courts.<sup>218</sup>

### **Arrest Cases<sup>219</sup>**

**Table 7.29: Arrests by Years, 1984 - 1991** <sup>220</sup>

Years	Frequencies	Percentages	Est. Rates per 100000
1984	14	10	1
1985	20	14	1
1986	31	22	2
1987	10	7	1
1988	10	7	1
1989	13	9	1
1990	26	18	2
1991	18	13	1

### ***Political Motivation***

The majority, 81% (108), of arrests were *not* political, but 19% (26) were politically motivated.<sup>221</sup>

### ***Areas***

The highest proportion, 36% (51), of arrests occurred in African residential areas, 27% (39) in coloured areas, 27% (39) in white areas, six per cent (9) in racially mixed areas and three per cent (4) in non-residential areas.<sup>222</sup>

### ***Places***

The majority, 83% (116), of arrests occurred out-of-doors, but 13% (18) took place in vehicles, three per cent (5) indoors, and one per cent (1) in victims' homes.<sup>223</sup>

### ***Characteristics of Victims:***

#### ***Victims' Sexes***

The majority, 99% (141), of arrest victims were male; only one per cent (1) were female. Considering the sex ratio of the background population, males were significantly over-represented and females under-represented as victims in arrests

218 M = 0.

219 Arrest and preventing escape combined: 142 cases involving 163 shooters.

220 M = 0.

221 M = 6% (8).

222 M = 0.

223 M = 1% (2).

(The CSS, 1991[ii]).<sup>224</sup>

### ***Victims' Race-Groups***

The majority, 51% (73), of arrest victims were African, but 48% (68) were coloured and one per cent (1) were white. Considering the racial composition of the background population, Africans were over-represented and whites under-represented as arrest victims (The CSS, 1991[ii]).<sup>225</sup>

### ***Victims' Age-Groups***

The majority, 78% (111), of arrest victims were adults, but 22% (31) were adolescents. Considering the age distribution in the background population, adults were over-represented, whereas children and older adults were under-represented as arrest victims (The CSS, 1991[ii]).<sup>226</sup>

### ***Victims' Employment Status***

The majority, 59% (61), of arrest victims were *not* gainfully employed, but 41% (38) were.<sup>227</sup>

### ***Victims' Police Status***

The majority, 99% (141), of arrest victims were civilians, but one per cent (1) were police officers. Significantly more arrest victims than expected were civilians and fewer were police officers.<sup>228</sup>

### ***Characteristics of Shooters:***

#### ***Shooters' Sexes***

In arrests all (163) shooters were male. Considering the sex ratio of the background population, males were significantly over-represented and females under-represented as shooters in arrests (The CSS, 1991[ii]).<sup>229</sup>

#### ***Shooters' Race-Groups***

In arrests the majority, 80% (113), of shooters were white, but 12% (17) were coloured and eight per cent (12) were African. Considering the racial composition of the background population, whites were significantly over-represented and coloureds under-represented as shooters in arrests (The CSS, 1991[ii]).<sup>230</sup>

224  $M = 0$ .  $P < 0.01$ ,  $X^2 = 142.03$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 8.48$ ,  $-8.36$ .

225  $M = 0$ .  $P < 0.01$ ,  $X^2 = 115.45$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 8.85$ ,  $-5.92$ .

226  $M = 0$ .  $P < 0.01$ ,  $X^2 = 52.92$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 7.59$ ,  $-5.19$ ,  $-3.31$ .

227  $P > 0.01$ ,  $X^2 = 0.54$ ,  $df = 1$  (not significant). Treat with caution,  $M = 30\%$  (43) and the background statistics were national figures for 1995.

228  $M = 0$ .  $P < 0.01$ ,  $X^2 = 138.03$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 8.3$ ,  $-8.3$ .

229  $M = 0$ .  $P < 0.01$ ,  $X^2 = 169.11$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 9.28$ ,  $-9.11$ .

230  $M = 13\%$  (21).  $P < 0.01$ ,  $X^2 = 186.46$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 11.55$ ,

### ***Shooters' Age-Groups***

In arrests all (163) shooters were adults: 99% (162) were aged between 19 and 59 and one per cent (1) were over 59. Considering the age distribution in the background population, older adults were significantly under-represented as shooters in arrests (The CSS, 1991[ii]).<sup>231</sup>

### ***Shooters' Employment Status***

In arrests the majority, 99% (153), of shooters were gainfully employed; only one per cent (2) were *not* gainfully employed. Considering the level of employment in the background population, gainfully employed people were significantly over-represented as shooters in arrests (The Ministry for Welfare and Population Development, 1995).<sup>232</sup>

### ***Shooters' Police Status***

In arrests the majority, 89% (141), of shooters were police; only 11% (18) were civilians.<sup>233</sup> Significantly more arrests than expected involved police and fewer involved civilian shooters.<sup>234</sup>

### ***Characteristics of Shooters' Firearms:***

#### ***Shooters' Handguns***

Handguns were used in the majority, 73% (118), of arrests, but 27% (43) involved long-guns.<sup>235</sup>

#### ***Automatic Status of Shooters' Guns***

Semi-automatics were used in the majority, 63% (101), of arrests, but 32% (52) involved guns that were not automatic and five per cent (8) fully-automatics.<sup>236</sup>

### ***Shooters' Gun Licence Status***

The majority, 99% (160), of shooters were in legal possession of the firearms they used in arrests, but one per cent (2) were *not* in lawful possession of their guns.<sup>237</sup>

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-6.63.

231 M = 0. P < 0.01, X<sup>2</sup> = 21.86, df = 1. Fwp < 0.01, z = -4.37.

232 M = 5% (8). P < 0.01, X<sup>2</sup> = 241.8, df = 1. Fwp < 0.01, z = 12.24, -9.59. Treat with caution, the background statistics were national figures for 1995.

233 Including three PSOs and excluding two members of the defence forces.

234 M = 1% (2). < 0.01, X<sup>2</sup> = 94.56, df = 1. Fwp < 0.01, z = 6.89, -6.89.

235 M = 1% (2).

236 M = 1% (2).

237 M = 1% (1).

***Factors related to Minimum Force:******Number of Potentially Fatal Shots***

In arrests the majority, 51 % (67), of shooters fired at least two potentially fatal shots at their victims, but 49 % (65) fired single shots.<sup>238</sup>

***Number of Entry-Wounds***

In arrests the majority, 52 % (73), of victims sustained more than one entry-wound, but 48 % (68) sustained single entry-wounds.<sup>239</sup>

***Shooters Identified as Police***

In arrests the majority, 72 % (88), of police shooters made their victims aware of their law enforcement status before shooting, but 28 % (34) did *not*.<sup>240</sup>

***Victims Informed of Arrest***

The majority, 88 % (110), of shooters who claimed their motive for shooting was to arrest, did *not* inform their victims before firing, but 12 % (15) did so.<sup>241</sup>

***Oral Warnings***

In arrests the majority, 71 % (100), of shooters did *not* give their victims oral warning of the intention to shoot, but 29 % (41) did issue such warnings.<sup>242</sup>

***Warning Shots***

In arrests the majority, 78 % (111), of shooters did *not* fire warnings before shooting at victims, but 22 % (31) did fire warnings.<sup>243</sup>

***Aiming at Victims' Legs***

In arrests the majority, 79 % (113), of shooters did *not* aim for their victims' legs, but 21 % (30) did aim for the legs.<sup>244</sup>

***Other Less-than-Lethal Means***

In arrests the majority, 80 % (115), of shooters employed other less-than-lethal means before shooting, but 20 % (28) did *not* employ such alternatives. The three most common means were: foot chases (58 %), abbreviated oral warnings (23 %) and vehicular chases (17 %).<sup>245</sup>

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238 M = 19 % (31).

239 M = 1 % (1).

240 M = 14 % (19).

241 M = 16 % (24), C = 1 % (1) and UF = 1.

242 M = 13 % (21) and C = 1 % (1).

243 M = 12 % (20) and C = 1 % (1).

244 M = 12 % (19), C = 1 % and UF = 16.

245 M = 12 % (19) and C = 1 % (1).

***Factors related to Proportionality:***

***Shooters Foreseeably Endangered Others***

In arrests the majority, 54% (72), of shooters foreseeably endangered others by firing at their victims, but 46% (61) did *not* foreseeably endanger anyone.<sup>246</sup>

***Whether Victims were Armed***

In arrests the majority, 59% (85), of victims were unarmed, but 41% (58) were armed.<sup>247</sup>

***Armed Victims' Weapon Types***

In arrests the majority, 66% (38), of armed victims had weapons other than guns, whereas 34% (20) had firearms.<sup>248</sup>

***Armed Victims' Handguns***

In arrests the majority, 80% (16), of victims' firearms were handguns, but 20% (4) were long-guns.<sup>249</sup>

***Automatic Status of Armed Victims' Guns***

In arrests the majority, 56% (5), of victims' guns were *not* automatic, but 44% (4) were semi-automatic firearms.<sup>250</sup>

***Armed Victims' Gun Licence Status***

In arrests the majority, 94% (17), of victims were *not* in legal possession of their guns; only six per cent (1) had licensed firearms.<sup>251</sup>

***Whether Victims Threatened Anyone***

In arrests the majority, 63% (81), of victims did *not* threaten anyone, but 37% (47) did threaten others. The three most common threats made by arrest victims were: shooting (22%), throwing stones (17%) and threatening with a weapon (17%).<sup>252</sup>

***Whether Victims Fled***

In arrests the majority, 98% (156), of victims were fleeing when shot, but interestingly, two per cent (4) of victims were *not* fleeing.<sup>253</sup>

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246 M = 18% (30).

247 M = 10% (16) and C = 3% (4).

248 M = 0.

249 M = 0 and C = 1% (2).

250 Treat with caution, M = 45% (9) and C = 1% (2).

251 M = 0 and C = 1% (2).

252 M = 10% (13) and C = 1% (1).

253 M = 1% (1) and C = 1% (2).

### ***Sides of Victims' Bodies Wounded Fatally***

In arrests the majority, 63% (100), of victims sustained fatal entry-wounds in the back, 24% (39) in the side and 13% (21) in the front.<sup>254</sup>

### ***Whether Victims were Suspects/Convicts***

In arrests the victims *were* criminal suspects by definition. The three most common offences were: theft (40%), robbery (12%) and burglary (11%).<sup>255</sup>

### ***Whether Victims were Dangerous***

In arrests the majority, 78% (111), of victims were *not* likely to have been dangerous if they had not been shot, but 22% (31) were likely to have been dangerous.<sup>256</sup>

### ***Whether Victims Endangered Life***

In arrests the majority, 85% (109), of victims did *not* endanger the lives of others, but 15% (19) did pose a significant threat to life.<sup>257</sup>

### ***Characteristics of the Legal Process:***

#### ***Highest Courts***

The majority, 99% (141), of arrests went no further than inquest courts; only one per cent (1) were heard in criminal courts.<sup>258</sup>

#### ***Types of Inquests***

The majority, 85% (121), of arrests that went to inquest were heard as *informal* proceedings; only 15% (21) were formal inquests.<sup>259</sup>

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254 M = 2% (3).

255 M = 4% (6) and C = 13% (21). Arrest victims were crime suspects by definition.

256 M = 11% (18) and C = 2% (3).

257 M = 9% (13) and C = 1% (1).

258 M = 0. One arrest case was heard in the Supreme Court.

259 M = 0.

## CHAPTER EIGHT

### RESEARCH RESULTS PART II: Cross-Tabulations for Selected Variables

#### SUICIDE CASES

##### Victims' Characteristics

Table 8.1.1: Victims' Sexes x Race-Groups <sup>1</sup>

	African victim	Coloured	Asian victim	White
Female victim	1 (8%)	1 (3%)	0 (0%)	50 (19%)
Male victim	12 (92%)	33 (97%)	2 (100%)	219 (81%)

Table 8.1.2: Victims' Sexes x Age-Groups

	Child victim	Adolescent	Adult victim	Elderly
Female victim	1 (50%)	3 (33%)	42 (18%)	6 (9%)
Male victim	1 (50%)	6 (67%)	197 (82%)	62 (91%)

Considering the composition of the background population, adult males were significantly over-represented as suicide victims in this sample, whereas adult females and under 19 year-olds of both sexes were under-represented (The CSS, 1991[ii]). <sup>2</sup>

Table 8.1.3: Victims' Sexes x Employment Status

	Victim employed	Victim not employed
Female victim	14 (10%)	26 (21%)
Male victim	133 (90%)	98 (79%)

Considering the composition of the background population, males who were not gainfully employed were significantly over-represented as suicide victims in this sample, whereas females were significantly under-represented irrespective of their employment status (The Ministry of Welfare and Population Development, 1995). <sup>3</sup>

<sup>1</sup> Unless otherwise stated, tabulated percentages are column-wise and have been rounded to the nearest whole number. Decimals have been rounded to the first place. Statistical calculations have been excluded in the interests of brevity.

<sup>2</sup>  $M = 0$ .  $P < 0.01$ ,  $X^2 = 531.4$ ,  $df = 3$ .  $Fwp < 0.01$ ,  $z = 11.6, 16.5, -5.5, -5.1, -4.2, -4.7, -5$ .

<sup>3</sup>  $M = 17\%(47)$ .  $P < 0.01$ ,  $X^2 = 167.1$ ,  $df = 1$ .  $Fwp < 0.01$ ,  $z = 3.6, -4.2, -7.4$ .



Table 8.1.4: Victims' Race-Groups x Age-Groups

	Child victim	Adolescent	Adult victim	Elderly
African victim	1 (50%)	0 (0%)	12 (5%)	0 (0%)
Coloured victim	1 (50%)	3 (33%)	29 (12%)	1 (1%)
Asian victim	0 (0%)	0 (0%)	2 (1%)	0 (0%)
White victim	0 (0%)	6 (67%)	196 (82%)	67 (99%)

Considering the composition of the background population, white adults were significantly over-represented as suicide victims in this sample, whereas African adults and coloured people under 60 were under-represented (The CSS, 1991[ii]). <sup>4</sup>

Table 8.1.5: Victims' Race-Groups x Employment Status

	Victim employed	Victim not employed
African victim	10 (7%)	2 (2%)
Coloured victim	23 (16%)	6 (5%)
Asian victim	2 (1%)	0 (0%)
White victim	112 (76%)	116 (93%)

Considering the composition of the background population, whites were significantly over-represented and Africans under-represented as suicide victims in this sample irrespective of their employment status (The CSS, 1991[ii]). <sup>5</sup>

## HOMICIDE CASES <sup>6</sup>

### Victims' Characteristics

Table 8.2.1: Victims' Sexes x Race-Groups

	African victim	Coloured	Asian victim	White
Female victim	53 (8%)	38 (7%)	0 (0%)	23 (40%)
Male victim	573 (92%)	504 (93%)	10 (100%)	36 (60%)

Considering the composition of the background population, African and coloured males were significantly over-represented as homicide victims, whereas whites of both sexes, and coloured and African females were under-represented (The CSS, 1991[ii]). <sup>7</sup>

Treat with caution, the background statistic was a national estimate for 1995.

<sup>4</sup>  $M = 0$ .  $P < 0.01$ ,  $X^2 = 852.7$ ,  $df = 9$ . Fwp  $< 0.01$ ,  $z = 21.4, 15.9, -4.2, -6.4, -5.4, -6$ .

Treat with caution, 31% (5) of expected frequencies were below five.

<sup>5</sup>  $M = 15\%$  (47).  $P < 0.01$ ,  $X^2 = 788.4$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 15.7, 19.2, -10.5, -6.6$ .

Treat with caution, the background statistic was a national estimate for 1995.

<sup>6</sup> Cases involving defence force shooters (6) were consistently excluded from the cross-tabulations, as these gun users were neither civilians nor law enforcement officers.

<sup>7</sup>  $M = 0$ .  $P < 0.01$ ,  $X^2 = 2257.2$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 40.3, 10.1, -9.9, -10.9, -16.6, -5.5$ .

Table 8.2.2: Victims' Sexes x Age-Groups

	Child victim	Adolescent	Adult victim	Elderly
Female victim	11 (48%)	20 (12%)	73 (7%)	10 (45%)
Male victim	12 (52%)	141 (88%)	958 (93%)	12 (55%)

Considering the composition of the background population, adult males were significantly over-represented as homicide victims, whereas females of all ages, male children and older adult males were under-represented (The CSS, 1991[ii]).<sup>8</sup>

Table 8.2.3: Victims' Sexes x Employment Status

	Victim employed	Victim not employed
Female victim	27 (5%)	72 (16%)
Male victim	536 (95%)	387 (84%)

Considering the composition of the background population, males were significantly over-represented and females under-represented as homicide victims irrespective of their employment status (The CSS, 1991[ii]; The Ministry for Welfare and Population Development, 1995).<sup>9</sup>

Table 8.2.4: Victims' Race-Groups x Age-Groups

	Child victim	Adolescent	Adult victim	Elderly
African victim	12 (52%)	79 (49%)	525 (51%)	10 (45%)
Coloured victim	6 (26%)	82 (51%)	450 (44%)	4 (18%)
Asian victim	0 (0%)	0 (0%)	9 (1%)	1 (5%)
White victim	5 (22%)	0 (0%)	47 (4%)	7 (32%)

Considering the composition of the background population, African and coloured adults were significantly over-represented as homicide victims, whereas African children, coloured and white youths under 19, and coloureds and whites over 59 were under-represented (The CSS, 1991[ii]).<sup>10</sup>

<sup>8</sup>  $M = 0$ .  $P < 0.01$ ,  $X^2 = 1692.2$ ,  $df = 3$ .

Fwp  $< 0.01$ ,  $z = 33.8, -9.5, -8.6, -14.7, -6.5, -10, -4.1$ .

<sup>9</sup>  $M = 17\%$  (215).  $P < 0.01$ ,  $X^2 = 805.4$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 19.7, 8.3, -10.2, -15.7$ .  
Treat with caution, the background statistic was a national estimate for 1995.

<sup>10</sup>  $M = 0$ .  $P < 0.01$ ,  $X^2 = 1475.8$ ,  $df = 9$ .

Fwp  $< 0.01$ ,  $z = 6.9, 31, 5.6, -5.1, -11.7, -5.3, -4.6, -7, -5.4, -6$ .

Table 8.2.5: Victims' Race-Groups x Employment Status

	Victim employed	Victim not employed
African victim	278 (49%)	241 (52%)
Coloured victim	243 (43%)	200 (43%)
Asian victim	8 (2%)	1 (1%)
White victim	34 (6%)	17 (4%)

Considering the composition of the background population, coloureds were significantly over-represented as homicide victims, whereas whites were under-represented irrespective of their employment status. Also, Africans and Asians not gainfully employed were under-represented as homicide victims (The CSS, 1991[ii]; The Ministry for Welfare and Population Development, 1995).<sup>11</sup>

### Shooters' Characteristics

Table 8.2.6: Shooters' Sexes x Race-Groups

	African shooter	Coloured	Asian shooter	White
Male shooter	262 (100%)	251 (98%)	9 (100%)	296 (98%)
Female shooter	0 (0%)	4 (2%)	0 (0%)	5 (2%)

Considering the composition of the background population, African and white males were significantly over-represented as shooters, whereas African, coloured and white females were under-represented (The CSS, 1991[ii]).<sup>12</sup>

Table 8.2.7: Shooters' Sexes x Age-Groups

	Child shooter	Adolescent	Adult shooter	Elderly
Male shooter	2 (100%)	18 (95%)	861 (99%)	12 (100%)
Female shooter	0 (0%)	1 (5%)	8 (1%)	0 (0%)

Considering the composition of the background population, adult males were significantly over-represented as shooters, whereas males under 19 and females of all ages were under-represented (The CSS, 1991[ii]).<sup>13</sup>

<sup>11</sup>  $M = 17\%$  (215).  $P < 0.01$ ,  $X^2 = 1143.4$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 26.5, 14.9, -5.4, -9., -9.1, -4.4$ . Treat with caution, the background statistic was a national estimate for 1995.

<sup>12</sup>  $P < 0.01$ ,  $X^2 = 1125.9$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 19.7, 18.1, -8.6, -15, -9.9$ .

Treat with caution,  $M = 40\%$  (562) and  $25\%$  (2) of expected frequencies below five.

<sup>13</sup>  $P < 0.01$ ,  $X^2 = 2056.4$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 38.4, -7, -9.3, -9, -15.4, -6.7$ .

Treat with caution,  $M = 35\%$  (487).

Table 8.2.8: Shooters' Sexes x Employment Status

	Shooter employed	Shooter not employed
Male shooter	569 (99%)	52 (96%)
Female shooter	3 (1%)	3 (4%)

Considering the composition of the background population, gainfully employed males were significantly over-represented as shooters, whereas females were under-represented irrespective of their employment status (The CSS, 1991[ii]; The Ministry for Welfare and Population Development, 1995).<sup>14</sup>

Table 8.2.9: Shooters' Race-Groups x Age-Groups

	Child shooter	Adolescent	Adult shooter	Elderly
African shooter	0 (0%)	2 (11%)	230 (30%)	1 (8%)
Coloured shoot.	1 (50%)	17 (89%)	230 (30%)	0 (0%)
Asian shooter	0 (0%)	0 (0%)	9 (2%)	0 (0%)
White shooter	1 (50%)	0 (0%)	288 (38%)	11 (92%)

Considering the composition of the background population, adult Africans and whites were significantly over-represented as shooters, whereas Africans, coloureds and whites under 19, and coloureds and whites over 59 were under-represented (The CSS, 1991[ii]).<sup>15</sup>

Table 8.2.10: Shooters' Race-Groups x Employment Status

	Shooter employed	Shooter not employed
African shooter	105 (22%)	11 (20%)
Coloured shooter	103 (22%)	27 (50%)
Asian shooter	8 (2%)	0 (0%)
White shooter	261 (54%)	16 (30%)

Considering the composition of the background population, gainfully employed Africans, whites and Asians were significantly over-represented as shooters, whereas Africans, coloureds and whites not gainfully employed were under-represented (The CSS, 1991[ii]; The Ministry for Welfare and Population Development, 1995).<sup>16</sup>

<sup>14</sup>  $P < 0.01$ ,  $X^2 = 1638.7$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 35.4$ , -15, -9.4. Treat with caution,  $M = 55\%$  (762) and the background statistic was a national estimate for 1995.

<sup>15</sup>  $P < 0.01$ ,  $X^2 = 739.9$ ,  $df = 9$ . Fwp  $< 0.01$ ,  $z = 13.9$ , 15.5, -4.5, -5.7, -7.5, -9.6, -5.7, -4.7, -4.9, -3.7. Treat with caution,  $M = 43\%$  (599).

<sup>16</sup>  $P < 0.01$ ,  $X^2 = 1207.5$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 10.9$ , 4.3, 29, -6.6, -11.3, -7.6. Treat with extreme caution,  $M = 62\%$  (858), 25% (2) of expected frequencies were below five and the background statistic was a national estimate for 1995.

**Victims' and Shooters' Characteristics****Table 8.2.11: Victims' x Shooters' Sexes**

	Male shooter	Female shooter
Male victim	858 (92%)	7 (78%)
Female victim	74 (8%)	2 (22%)

Considering the composition of the background population, significantly more male victims than expected were killed by male and fewer by female shooters (The CSS, 1991[ii]). <sup>17</sup>

**Table 8.2.12: Victims' Sexes x Shooters' Race-Groups**

	African shooter	Coloured	Asian shooter	White
Male victim	236 (90%)	239 (94%)	8 (89%)	272 (90%)
Female victim	27 (10%)	16 (6%)	1 (11%)	29 (10%)

Considering the composition of the background population, significantly more males than expected were killed by African and white shooters, whereas fewer females were killed by African, coloured and white shooters (The CSS, 1991[ii]). <sup>18</sup>

**Table 8.2.13: Victims' Sexes x Shooters' Age-Groups**

	Child shooter	Adolescent	Adult shooter	Elderly
Male victim	2 (100%)	18 (96%)	807 (92%)	5 (42%)
Female victim	0 (0%)	1 (4%)	68 (8%)	7 (58%)

Considering the composition of the background population, significantly more males than expected were killed by adult shooters, whereas fewer males and females were killed by shooters under 19 and over 59 (The CSS, 1991[ii]). <sup>19</sup>

**Table 8.2.14: Victims' Sexes x Shooters' Employment Status**

	Shooter employed	Shooter not employed
Male victim	542 (95%)	43 (78%)
Female victim	31 (5%)	12 (22%)

<sup>17</sup>  $P < 0.01$ ,  $X^2 = 2339.9$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 42.1$ , -14.9.

Treat with caution,  $M = 32\%$  (448).

<sup>18</sup>  $P < 0.01$ ,  $X^2 = 888.2$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 18.1$ , 16.1, -5.9, -14., -7.7.

Treat with caution,  $M = 40\%$  (561).

<sup>19</sup>  $P < 0.01$ ,  $X^2 = 1774.5$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 35.9$ , -9, -6.9, -5.2, -9.4, -9.1, -4.9.

Considering the composition of the background population, significantly more males were killed by gainfully employed shooters than was expected (The CSS, 1991[ii]; The Ministry for Welfare and Population Development, 1995).<sup>20</sup>

Table 8.2.15: Victims' Sexes x Whether Shooters Knew Victims<sup>21</sup>

	Victim known	Victim a stranger
Male victim	181 (80%)	521 (97%)
Female victim	44 (20%)	15 (3%)

Table 8.2.16: Victims' Race-Groups x Shooters' Sexes

	Male shooter	Female shooter
African victim	470 (50%)	1 (11%)
Coloured victim	405 (44%)	5 (56%)
Asian victim	9 (1%)	0 (0%)
White victim	48 (5%)	3 (33%)

Considering the composition of the background population, significantly more African victims were killed by male shooters than was expected. However, fewer African and coloured victims were killed by female shooters, and fewer whites were killed by both sexes (The CSS, 1991[ii]).<sup>22</sup>

Table 8.2.17: Victims' x Shooters' Race-Groups

	African shooter	Coloured	Asian shooter	White
African victim	240 (91%)	15 (6%)	1 (11%)	150 (49%)
Coloured victim	12 (5%)	229 (90%)	6 (67%)	117 (39%)
Asian victim	3 (1%)	3 (1%)	2 (22%)	1 (1%)
White victim	8 (3%)	8 (3%)	0 (0%)	33 (11%)

Considering the composition of the background population, significantly more Africans than expected were killed by African and white shooters, and fewer by coloured shooters. Also fewer coloured victims were killed by African shooters, and fewer whites were killed by African and coloured shooters (The CSS, 1991[ii]).<sup>23</sup>

Treat with caution,  $M = 35\%$  (481).

<sup>20</sup>  $P < 0.01$ ,  $X^2 = 1901$ , 1,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 10.7$ .

Treat with extreme caution,  $M = 55\%$  (761).

<sup>21</sup> Treat with caution,  $M = 45\%$  (628).

<sup>22</sup>  $P < 0.01$ ,  $X^2 = 1250.9$ ,  $df = 4$ . Fwp  $< 0.01$ ,  $z = 40.7$ , -9.4, -15.8, -6.6.

Treat with caution,  $M = 32\%$  (448).

<sup>23</sup>  $P < 0.01$ ,  $X^2 = 2035.4$ ,  $df = 9$ . Fwp  $< 0.01$ ,  $z = 38.3$ , 17.4, -7.6, -7.9, -5.1, -10.1. Treat with extra caution,  $M = 40\%$  (561) and  $31\%$  (5) of expected frequencies were below five.

Table 8.2.18: Victims' Race-Groups x Shooters' Age-Groups

	Child shooter	Adolescent	Adult shooter	Elderly
African victim	0 (0%)	2 (11%)	445 (51%)	1 (8%)
Coloured	1 (50%)	17 (89%)	379 (43%)	5 (42%)
Asian victim	0 (0%)	0 (0%)	9 (1%)	0 (0%)
White victim	1 (50%)	0 (0%)	42 (5%)	6 (50%)

Considering the composition of the background population, significantly more Africans than expected were killed by adult shooters and fewer by shooters under 19 years. Similarly, more coloureds were killed by adults and fewer by shooters aged over 59 or under 19 years (The CSS, 1991[ii]).<sup>24</sup>

Table 8.2.19: Victims' Race-Groups x Shooters' Employment Status

	Shooter employed	Shooter not employed
African victim	305 (53%)	12 (22%)
Coloured victim	250 (44%)	29 (53%)
Asian victim	4 (1%)	0 (0%)
White victim	14 (2%)	14 (25%)

Considering the composition of the background population, significantly more African and coloured victims than expected were killed by gainfully employed shooters. By contrast, fewer whites were killed irrespective of their shooters' employment status (The CSS, 1991[ii]; The Ministry for Welfare and Population Development, 1995).<sup>25</sup>

Table 8.2.20: Victims' Age-Groups x Shooters' Sexes

	Male shooter	Female shooter
Child victim	22 (2%)	2 (22%)
Adolescent victim	136 (15%)	0 (0%)
Adult victim	761 (82%)	7 (78%)
Elderly victim	13 (1%)	0 (0%)

<sup>24</sup>  $P < 0.01$ ,  $X^2 = 1746.2$ ,  $df = 9$ . Fwp  $< 0.01$ ,  $z = 35.9, 3.5, -5.8, -5.2, 6.7, -5.5, -7.6, -9.5$ . Treat with caution,  $M = 35\%$  (351).

<sup>25</sup>  $P < 0.01$ ,  $X^2 = 1940.1$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 38.8, 10.7, -6.1, -8.7$ .

Treat with extreme caution,  $M = 55\%$  (761), 25% (2) of expected frequencies were

Considering the composition of the background population, significantly more victims aged between 13 and 59 than expected were killed by males, and fewer people of all ages were killed by female shooters (The CSS, 1991[ii]).<sup>26</sup>

Table 8.2.21: Victims' Age-Groups x Shooters' Race-Groups

	African shooter	Coloured	Asian shooter	White
Child victim	7 (3%)	4 (2%)	0 (0%)	13 (4%)
Adolescent	25 (10%)	34 (13%)	0 (0%)	60 (20%)
Adult victim	227 (86%)	215 (84%)	9 (100%)	222 (74%)
Elderly victim	4 (2%)	2 (1%)	0 (0%)	6 (2%)

Considering the composition of the background population, significantly more adults and fewer children than expected, were killed by African and white shooters. Also, fewer children, adolescents and older adults than expected, were killed by coloured shooters (The CSS, 1991[ii]).<sup>27</sup>

Table 8.2.22: Victims' x Shooters' Age-Groups

	Child shooter	Adolescent	Adult shooter	Elderly
Child victim	1 (50%)	0 (0%)	23 (3%)	0 (0%)
Adolescent	0 (0%)	3 (16%)	131 (15%)	0 (0%)
Adult victim	1 (50%)	16 (84%)	714 (81%)	8 (67%)
Elderly victim	0 (0%)	0 (0%)	7 (1%)	4 (33%)

Considering the composition of the background population, significantly more adults than expected were killed by adult shooters, and fewer people of all ages were killed by shooters under 19 and over 59 (The CSS, 1991[ii]).<sup>28</sup>

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below five and the background statistic was a national estimate for 1995.

<sup>26</sup>  $P < 0.01$ ,  $X^2 = 1572.1$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 31.8, 5.8, -6.2, -15.8, -9.3, -9.3$ .

Treat with caution,  $M = 32\%$  (448).

<sup>27</sup>  $P < 0.01$ ,  $X^2 = 527.7$ ,  $df = 9$ . Fwp  $< 0.01$ ,  $z = 15.1, 9.4, -4.2, -4.3, -8.8, -5.2, -5.7$ .

Treat with extreme caution,  $M = 40\%$  (561), and 25% (4) of expected frequencies were below five.

<sup>28</sup>  $P < 0.01$ ,  $X^2 = 1157.5$ ,  $df = 9$ . Fwp  $< 0.01$ ,  $z = 26.6, 4.3, -5.6, -5.6, -3.8, -5.6, -4.8, -3.6, -3.7, -3.6, -5.2$ . Treat with caution,  $M = 35\%$  (481).



Table 8.2.23: Victims' Age-Groups x Shooters' Employment Status

	Shooter employed	Shooter not employed
Child victim	18 (3%)	3 (6%)
Adolescent victim	105 (18%)	9 (16%)
Adult victim	448 (78%)	38 (69%)
Elderly victim	2 (1%)	5 (9%)

Considering the composition of the background population, significantly more adults than expected were killed by gainfully employed shooters, and fewer people of all ages were killed by shooters not gainfully employed (The CSS, 1991[ii]; The Ministry for Welfare and Population Development, 1995).<sup>29</sup>

Table 8.2.24: Victims' Employment Status x Shooters' Sexes

	Male shooter	Female shooter
Victim employed	393 (54%)	4 (50%)
Victim not employed	335 (46%)	4 (50%)

Considering the composition of the background population, more people than expected were killed by male shooters and fewer by females irrespective of their employment status (The Ministry for Welfare and Population Development, 1995; The CSS, 1991[ii]).<sup>30</sup>

Table 8.2.25: Victims' Employment Status x Shooters' Race-Groups

	African shooter	Coloured	Asian shooter	White
V employed	137 (63%)	118 (60%)	3 (43%)	85 (40%)
V not employed	79 (37%)	79 (40%)	4 (57%)	130 (60%)

Considering the composition of the background population, significantly more gainfully employed people than expected were killed by African shooters, and fewer people not gainfully employed were killed by coloured shooters (The Ministry for Welfare and Population Development, 1995; The CSS, 1991[ii]).<sup>31</sup>

<sup>29</sup>  $P < 0.01$ ,  $X^2 = 1503.2$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 32$ , 11.5, -8.7, -7.6, -12.9, -5.

Treat with extreme caution,  $M = 55\%$  (761) and the background statistics were national figures for 1995.

<sup>30</sup>  $P < 0.01$ ,  $X^2 = 788$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 11.1$ , 17.2, -16.3, -10.15.

Treat with extreme caution,  $M = 47\%$  (653) and the background statistic was a national estimate for 1995.

<sup>31</sup>  $P < 0.01$ ,  $X^2 = 281.5$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 13.4$ , -9.18.

Treat with extreme caution,  $M = 54\%$  (754), 25% (2) of expected frequencies were

Table 8.2.26: Victims' Employment Status x Shooters' Age-Groups

	Child shooter	Adolescent	Adult shooter	Elderly
V employed	1 (50%)	9 (69%)	361 (53%)	6 (55%)
V not employed	1 (50%)	4 (31%)	322 (47%)	5 (45%)

Considering the composition of the background population, irrespective of their employment status, adults killed significantly more victims than expected, whereas shooters under 19 and over 59 years killed fewer people (The Ministry for Welfare and Population Development, 1995; The CSS, 1991[ii]).<sup>32</sup>

Table 8.2.27: Victims' x Shooters' Employment Status

	Shooter employed	Shooter not employed
Victim employed	205 (37%)	22 (46%)
Victim not employed	229 (53%)	26 (54%)

Considering the composition of the background population, gainfully employed shooters killed significantly more people than expected, whereas shooters not gainfully employed killed fewer people (The Ministry for Welfare and Population Development, 1995; The CSS, 1991[iii]).<sup>33</sup>

### Lawfulness and General Characteristics

Table 8.3.1: Lawfulness x Years - Justifiable, Criminal and Undetermined Firearm Homicides, 1984 - 1991<sup>34</sup>

Years	Justifiable Homicide	Justifiable per 100000	Criminal Homicide	Criminal per 100000	Undeter. Homicide	Und. Per 100000
1984	30	2	20	1	9	1
1985	90	6	37	2	27	2
1986	62	4	33	2	40	3
1987	31	2	46	3	23	2
1988	28	2	38	2	15	1
1989	45	3	45	3	30	2
1990	57	3	63	4	40	2
1991	46	3	52	3	72	4

below five and the background statistic was a national estimate for 1995.

<sup>32</sup>  $P < 0.01$ ,  $X^2 = 604.3$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 17.5$ , 5.1, -7, -5.6, -3.4, -9.1, -8.4, -5.1.

Treat with extreme caution,  $M = 49\%$  (680) and the background statistic was a national estimate for 1995.

<sup>33</sup>  $P < 0.01$ ,  $X^2 = 595$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 10.8$ , 16.4, -11.7, -8.6.

Treat with extreme caution,  $M = 65\%$  (907) and the background statistic was a national estimate for 1995.

<sup>34</sup> Rates based on the estimated population of Cape Town.

Table 8.3.2: Lawfulness x Political Motivation <sup>35</sup>

	Politically Motivated	Not Political
Justifiable homicide	100 (44%)	260 (46%)
Criminal homicide	47 (20%)	209 (37%)
Undetermined homicide	82 (36%)	97 (17%)

Table 8.3.3: Lawfulness x Number of Shooters <sup>36</sup>

	Single shooter	At least two shooters
Justifiable homicide	351 (46%)	29 (39%)
Criminal homicide	251 (33%)	26 (35%)
Undetermined homicide	159 (21%)	19 (26%)

Table 8.3.4: Lawfulness x Areas <sup>37</sup>

	Black area	White area	Mixed area	Non-residential
Justifiable hom.	278 (36%)	82 (57%)	21 (41%)	7 (54%)
Criminal hom.	256 (34%)	50 (35%)	23 (45%)	2 (15%)
Undetermined	226 (30%)	12 (8%)	7 (14%)	4 (31%)

Table 8.3.5: Lawfulness x Places <sup>38</sup>

	Victim's home	Victim's work	Indoors	Outdoors
Justifiable hom.	13 (12%)	2 (5%)	73 (46%)	289 (58%)
Criminal hom.	78 (72%)	34 (77%)	63 (40%)	95 (19%)
Undetermined	17 (16%)	8 (18%)	23 (14%)	117 (23%)

Table 8.3.6: Lawfulness x Whether Shooters Knew Victims <sup>39</sup>

	Victim known	Victim a stranger
Justifiable homicide	54 (24%)	388 (73%)
Criminal homicide	128 (56%)	75 (14%)
Undetermined homicide	45 (20%)	69 (13%)

<sup>35</sup> Treat with caution, M = 36% (442).

<sup>36</sup> Treat with caution, M = 32% (397).

<sup>37</sup> M = 22% (269).

<sup>38</sup> Treat with caution, M = 34% (425).

<sup>39</sup> Treat with caution, M = 45% (630).

### Lawfulness and Victims' Characteristics

Table 8.3.7: Lawfulness x Victims' Sexes <sup>40</sup>

	Female victim	Male victim
Justifiable homicide	7 (8%)	382 (43%)
Criminal homicide	57 (67%)	277 (31%)
Undetermined homicide	21 (25%)	235 (26%)

Given the composition of the background population, males were significantly over-represented and females under-represented as victims of homicides irrespective of lawfulness (The CSS, 1991[ii]). <sup>41</sup>

Table 8.3.8: Lawfulness x Victims' Race-Groups

	African victim	Coloured	Asian victim	White
Justifiable hom.	190 (38%)	190 (46%)	2 (25%)	7 (14%)
Criminal hom.	142 (28%)	148 (35%)	5 (63%)	39 (76%)
Undetermined	171 (34%)	79 (19%)	1 (12%)	5 (10%)

Given the composition of the background population, Africans were significantly over-represented and whites under-represented as victims of homicides irrespective of lawfulness (The CSS, 1991[ii]). Also, coloureds were significantly under-represented as victims of undetermined homicides. <sup>42</sup>

Table 8.3.9: Lawfulness x Victims' Age-Groups

	Child victim	Adolescent	Adult victim	Elderly
Justifiable hom.	4 (20%)	67 (52%)	315 (39%)	3 (17%)
Criminal hom.	13 (65%)	33 (26%)	276 (34%)	12 (66%)
Undetermined	3 (15%)	28 (22%)	222 (27%)	3 (17%)

Given the composition of the background population, adults were significantly over-represented as victims of homicides irrespective of lawfulness. By contrast, older adults and children were significantly under-represented as victims of justifiable and undetermined homicides, whereas those under 19 were under-represented as victims of criminal homicides (The CSS, 1991[ii]). <sup>43</sup>

<sup>40</sup> M = 21% (258).

<sup>41</sup> M = 21% (258).  $P < 0.01$ ,  $X^2 = 717.3$ ,  $df = 2$ . Fwp < 0.01,  $z = 13.8, 9.8, 8.8, -13.6, -9.6, -8.7$ .

<sup>42</sup> M = 21% (258).  $P < 0.01$ ,  $X^2 = 791.8$ ,  $df = 6$ . Fwp < 0.01,  $z = 13.5, 17.4, 10, -9.4, -7.5, -5.1$ . Treat with caution, 25% (3) of expected counts were below five.

<sup>43</sup> M = 21% (258).  $P < 0.01$ ,  $X^2 = 356.7$ ,  $df = 6$ . Fwp < 0.01,  $z = 6.9, 6.8, 6.8, 5, -8.1$ .

Table 8.3.10: Lawfulness x Victims' Employment Status

	Victim employed	Victim not employed
Justifiable homicide	126 (30%)	157 (46%)
Criminal homicide	168 (39%)	101 (29%)
Undetermined homicide	131 (31%)	87 (25%)

Given the employment rate in the background population, gainfully employed people were significantly over-represented as victims of criminal and undetermined homicides in this sample (The Ministry for Welfare and Population Development, 1995).<sup>44</sup>

Table 8.3.11: Lawfulness x Victims' Police Status

	Civilian victim	Police victim
Justifiable homicide	384 (41%)	5 (18%)
Criminal homicide	313 (33%)	17 (61%)
Undetermined homicide	249 (26%)	6 (21%)

Table 8.3.12: Lawfulness x Police Victims' Duty Status

	Victim on-duty	Victim off-duty
Justifiable homicide	1 (8%)	4 (27%)
Criminal homicide	7 (58%)	9 (60%)
Undetermined homicide	4 (34%)	2 (13%)

### Lawfulness and Characteristics of Shooters

Table 8.3.13: Lawfulness x Shooters' Sexes

	Female shooter	Male shooter
Justifiable homicide	4 (45%)	455 (50%)
Criminal homicide	3 (32%)	311 (34%)
Undetermined homicide	2 (22%)	154 (16%)

Given the composition of the background population, males were significantly over-represented and females under-represented as shooters in homicides irrespective of lawfulness (The CSS, 1991[ii]).<sup>45</sup>

-3.8, -6.6, -3.5, -6.3.

<sup>44</sup> M = 21% (258). P < 0.01,  $X^2 = 118.5$ , df = 2. Fwp < 0.01, z = 6.5, 5.3.

Treat with caution, the background statistic was a national estimate for 1995.

<sup>45</sup> M = 21% (258). P < 0.01,  $X^2 = 929.4$ , df = 2. Fwp < 0.01, z = 15.3, 8.9, 12.7, -15, -8.7, -12.4.

Table 8.3.14: Lawfulness x Shooters' Race-Groups

	African shooter	Coloured	Asian shooter	White
Justifiable hom.	54 (21%)	88 (35%)	5 (56%)	246 (82%)
Criminal hom.	135 (51%)	124 (49%)	3 (33%)	36 (12%)
Undetermined	74 (28%)	42 (16%)	1 (11%)	18 (6%)

Given the composition of the background population, Africans were significantly over-represented as shooters in criminal and undetermined homicides, whereas whites were over-represented as shooters in justifiable homicides. By contrast, coloureds were significantly under-represented as shooters in justifiable and undetermined homicides, whereas whites were under-represented as shooters in criminal homicides (The CSS, 1991[ii]).<sup>46</sup>

Table 8.3.15: Lawfulness x Shooters' Age-Groups

	Child shooter	Adolescent	Adult shooter	Elderly
Justifiable hom.	1 (50%)	4 (21%)	448 (52%)	5 (42%)
Criminal hom.	1 (50%)	15 (79%)	267 (31%)	6 (50%)
Undetermined	0 (0%)	0 (0%)	146 (17%)	1 (8%)

Given the composition of the background population, adults were significantly over-represented and people under 19 were under-represented as shooters in homicides irrespective of lawfulness. Also, older adults were significantly under-represented as shooters in justifiable and criminal homicides (The CSS, 1991[ii]).<sup>47</sup>

Table 8.3.16: Lawfulness x Shooters' Employment Status

	Shooter employed	Shooter not employed
Justifiable homicide	410 (73%)	10 (18%)
Criminal homicide	74 (13%)	39 (72%)
Undetermined homicide	79 (14%)	5 (10%)

Given the employment rate in the background population, gainfully employed people were significantly over-represented as shooters in homicides irrespective of lawfulness (The Ministry for Welfare and Population Development, 1995).<sup>48</sup>

<sup>46</sup>  $P < 0.01$ ,  $X^2 = 534.55$ ,  $df = 6$ . Fwp  $< 0.01$ ,  $z = 10.6, 9.4, 14.3, -8.5, -3.6, -4.8$ .  
Treat with extreme caution,  $M = 41\%$  (563) and  $25\%$  (3) of expected frequencies were below five.

<sup>47</sup>  $P < 0.01$ ,  $X^2 = 620.9$ ,  $df = 6$ . Fwp  $< 0.01$ ,  $z = 12.4, 8.6, 7.2, -3.5, -5.1, -5.1, -9.2, -7.3, -5.3, -5.2, -3.5$ . Treat with caution,  $M = 36\%$  (495).

<sup>48</sup>  $P < 0.01$ ,  $X^2 = 785.2$ ,  $df = 2$ . Fwp  $< 0.01$ ,  $z = 19.9, 4.7, 8.3$ . Treat with extreme caution,

Table 8.3.17: Lawfulness x Shooters' Police Status <sup>49</sup>

	Police shooter	Civilian shooter
Justifiable homicide	345 (79%)	109 (29%)
Criminal homicide	37 (8%)	192 (50%)
Undetermined homicide	55 (13%)	80 (21%)

Table 8.3.18: Lawfulness x Police Shooters' Duty Status <sup>50</sup>

	Shooter on duty	Shooter off duty
Justifiable homicide	315 (85%)	53 (61%)
Criminal homicide	14 (4%)	22 (25%)
Undetermined homicide	43 (11%)	12 (14%)

### Lawfulness and Characteristics of Shooters' Firearms

Table 8.3.19: Lawfulness x Shooters' Handguns <sup>51</sup>

	Handgun	Long gun
Justifiable homicide	290 (42%)	161 (60%)
Criminal homicide	254 (37%)	55 (20%)
Undetermined homicide	149 (21%)	53 (20%)

Table 8.3.20: Lawfulness x Automatic Status of Shooters' Guns <sup>52</sup>

	Automatic guns	Semi-automatic guns	Non-automatic guns
Justifiable homicide	11 (61%)	193 (55%)	221 (52%)
Criminal homicide	5 (28%)	109 (31%)	138 (32%)
Undetermined	2 (11%)	51 (14%)	70 (16%)

Table 8.3.21: Lawfulness x Shooters' Ammunition Type <sup>53</sup>

	Bullets	Pellets
Justifiable homicide	313 (35%)	149 (61%)
Criminal homicide	336 (38%)	46 (19%)
Undetermined homicide	236 (27%)	51 (20%)

M = 56% (772) and the background statistic was a national estimate for 1995.

<sup>49</sup> Excluding 6 defence force members. Treat with caution, M = 41% (565).

<sup>50</sup> M = 3% (12).

<sup>51</sup> Treat with caution, M = 31% (427).

<sup>52</sup> Treat with extreme caution, M = 42% (589).

<sup>53</sup> M = 19% (258).

Table 8.3.22: Lawfulness x Shooters' Gun Licence Status <sup>54</sup>

	Shooter's gun licensed	Shooters' gun not licensed
Justifiable homicide	415 (76%)	33 (20%)
Criminal homicide	64 (12%)	101 (61%)
Undetermined homicide	69 (12%)	32 (19%)

### Lawfulness and Indicators of Restraint

Table 8.3.23: Lawfulness x Minimum Force Indicators <sup>55</sup>

	Justifiable Homicide	Criminal Homicide	Undetermined
One shot	172 (46%)	115 (42%)	80 (52%) <sup>56</sup>
Identified as police	203 (71%)	9 (36%)	9 (27%) <sup>57</sup>
Informed of arrest	14 (13%)	1 (33%)	0 (0%) <sup>58</sup>
Oral warning	102 (27%)	27 (9%)	13 (13%) <sup>59</sup>
Warning shot	98 (26%)	29 (10%)	23 (23%) <sup>60</sup>
Aiming at legs	69 (18%)	25 (8%)	14 (13%) <sup>61</sup>
Alternatives <sup>62</sup>	210 (54%)	45 (15%)	35 (32%) <sup>63</sup>

Table 8. 3.24: Lawfulness and Proportionality Indicators <sup>64</sup>

	Justifiable Homicide	Criminal Homicide	Undetermined
Dangerous victim	177 (50%)	35 (13%)	34 (32%) <sup>65</sup>
V threatened life	92 (25%)	16 (6%)	16 (15%) <sup>66</sup>
Not danger others	146 (39%)	85 (33%)	25 (25%) <sup>67</sup>
(1+2) or (1+3)	65 (21%)	10 (5%)	11 (13%) <sup>68</sup>

<sup>54</sup> Treat with caution, M = 48% (663).

<sup>55</sup> Positives only. Percentages not column-wise, see denominators provided.

<sup>56</sup> Denominators (D) = 378, 274, 154 Treat with caution, M = 42% (583).

<sup>57</sup> D = 286, 25, 33. M = 23% (103).

<sup>58</sup> D = 111, 3, 11. M = 0.

<sup>59</sup> D = 380, 301, 98. Treat with caution, M = 44% (606).

<sup>60</sup> D = 383, 304, 99. Treat with caution, M = 43% (598).

<sup>61</sup> D = 387, 302, 109. Treat with caution, M = 42% (590).

<sup>62</sup> The foot chase was the most common less-than-lethal alternative in justifiable and undetermined homicides, but the physical struggle was top in criminal homicides.

<sup>63</sup> D = 389, 300, 109. Treat with caution, M = 42% (590).

<sup>64</sup> Positives only. Percentages not column-wise, see denominators provided.

<sup>65</sup> D = 357, 271, 107. Treat with caution, M = 43% (593).

<sup>66</sup> D = 373, 284, 105. Treat with caution, M = 38% (475).

<sup>67</sup> D = 375, 261, 101. Treat with caution, M = 47% (652).

<sup>68</sup> D = 313, 208, 85. Treat with caution, M = 47% (652).



	Justifiable Homicide	Criminal Homicide	Undetermined
<b>Victims:</b>			
- Adult	318 (82%)	288 (86%)	225 (88%) <sup>69</sup>
- Armed	173 (58%)	47 (18%)	29 (28%) <sup>70</sup>
- Armed with gun	42 (14%)	25 (9%)	10 (10%) <sup>71</sup>
- Threatened	272 (73%)	67 (24%)	50 (48%) <sup>72</sup>
- Not fleeing <sup>73</sup>	169 (50%)	226 (89%)	94 (78%) <sup>74</sup>
- Not shot in back	225 (61%)	263 (82%)	157 (73%) <sup>75</sup>
- Crime suspect	346 (96%)	51 (20%)	58 (53%) <sup>76</sup>
- Violent suspect	177 (49%)	37 (15%)	34 (31%) <sup>77</sup>

### Lawfulness and Characteristics of the Legal Process

Table 8.3.25: Lawfulness x Types of Legal Proceeding<sup>78</sup>

	Inquest	Criminal trial
Justifiable homicide	363 (45%)	26 (15%)
Criminal homicide	228 (28%)	106 (62%)
Undetermined homicide	218 (27%)	38 (23%)

Table 8.3.26: Lawfulness x Types of Inquest<sup>79</sup>

	Informal inquest	Formal inquest
Justifiable homicide	300 (43%)	63 (57%)
Criminal homicide	208 (30%)	20 (18%)
Undetermined homicide	190 (27%)	28 (25%)

Table 8.3.27: Lawfulness x Types of Trial Court<sup>80</sup>

	Regional Magistrates' Court	Supreme Court
Justifiable homicide	9 (17%)	17 (15%)
Criminal homicide	34 (63%)	72 (62%)
Undetermined homicide	11 (20%)	27 (23%)

<sup>69</sup> D = 389, 334, 256. M = 21% (258).

<sup>70</sup> D = 297, 265, 104. Treat with caution, M = 42% (525).

<sup>71</sup> D = 297, 265, 104. Treat with caution, M = 42% (525).

<sup>72</sup> D = 373, 284, 105. Treat with caution, M = 44% (547).

<sup>73</sup> Non-dangerous fleeing suspects in justifiable homicides, 36% (124).

<sup>74</sup> D = 341, 255, 121. Treat with caution, M = 41% (510).

<sup>75</sup> D = 367, 322, 214. M = 27% (334).

<sup>76</sup> D = 361, 251, 110. Treat with caution, M = 40% (498).

<sup>77</sup> D = 361, 251, 110. Treat with caution, M = 40% (498).

<sup>78</sup> M = 21% (258).

<sup>79</sup> M = 0.

<sup>80</sup> M = 0.

### **Lawfulness x Shooters Prosecuted**

The majority, 63% (121), of the prosecuted were found criminally liable for the firearm homicides in which they had been involved. But 18% (35) were found to have committed justifiable homicides and the Courts were unable to reach a finding on lawfulness in the remaining 18% (34) of cases. Notably, 19% (265) of shooters who perpetrated unlawful homicides were not charged or prosecuted, mainly because they were not identified or traced.

### **Shooters' Motives and Legal Classifications**

The majority, 75% (38), of homicides shooters claimed were unintentional were found to be criminal homicides, most commonly unlawful unspecified (30%) and culpable homicides (25%); only 21% (13) were found to be accidental. The Courts were unable to make a finding in both homicides that were denied by the alleged shooters. The majority, 68% (202), of homicides shooters claimed were in self defence were ruled to be justifiable homicides, but 19% per cent (56) were found to be unlawful. The two most common findings were self defence (64%) and undetermined (13%). The Court upheld the shooter's motives in the only case of necessity. The majority, 83% (10), of homicides shooters claimed were in defence of property were found to be justifiable homicides, most commonly self defence (42%) and defence of property (33%). However, 17% (2) of these cases were ruled to be unlawful. The majority, 91% (159), of homicides shooters claimed were to effect arrests were found to be justifiable homicides; only two per cent (3) were ruled unlawful. The two most common findings were arrest (87%) and undetermined (7%).

The majority, 64% (9), of shootings police shooters claimed were to disperse illegal gatherings were ruled to be justifiable homicides and none were found to be unlawful. Indeed only two findings were made in these cases: crowd dispersal (64%) and undetermined (26%). Furthermore, the Courts found all (16) homicides police shooters claimed were in the interests of public safety to be justifiable homicides and upheld shooters' motives in all cases of obedience to orders (2).

### Shooters' Police Status and General Characteristics

Table 8.4.1: Shooters' Police Status x Years - Gun Homicides by Civilian and Police Shooters, 1984-1991 <sup>81</sup>

Years	Police Shooters	Police shooters per 100000	Civilian Shooters	Civilian per 100000
1984	23	2	27	2
1985	128	8	43	3
1986	74	6	51	3
1987	37	2	54	3
1988	32	2	29	2
1989	44	3	67	4
1990	62	4	49	3
1991	47	3	66	4

Table 8.4.2: Shooters' Police Status x Political Motivation <sup>82</sup>

	Politically motivated shooting	Shooting not political
Police shooter	201 (84%)	217 (41%)
Civilian shooter	38 (16%)	309 (59%)

Table 8.4.3: Shooters' Police Status x Areas <sup>83</sup>

	Black area	White area	Racially mixed	Non-residential
Police shooter	377 (59%)	51 (39%)	12 (25%)	6 (60%)
Civilian shooter	265 (41%)	79 (61%)	36 (75%)	4 (40%)

Table 8.4.4: Shooters' Police Status x Places <sup>84</sup>

	Victims' home	V's workplace	Inside	Outside
Police shooter	20 (24%)	4 (10%)	54 (39%)	344 (70%)
Civilian shooter	64 (76%)	36 (90%)	83 (61%)	145 (30%)

Table 8.4.5: Shooters' Police Status x Whether Shooter Knew Victims <sup>85</sup>

	Victim known	Victim a stranger
Police shooter	44 (20%)	375 (72%)
Civilian shooter	179 (80%)	146 (28%)

<sup>81</sup> Treat with caution, M = 40% (550).

<sup>82</sup> Treat with caution, M = 44% (618).

<sup>83</sup> Treat with caution, M = 40% (553).

<sup>84</sup> Treat with caution, M = 46% (633).

<sup>85</sup> Treat with caution, M = 46% (645).

Table 8.4.6: Shooters' Police Status x Number of Shooters <sup>86</sup>

	Single shooter	At least two shooters
Police shooter	337 (54%)	107 (63%)
Civilian shooter	305 (46%)	62 (37%)

**Shooters' Police Status and Victims' Characteristics**

Table 8.4.7: Shooters' Police Status x Victims' Sexes

	Male victim	Female victim
Police shooter	428 (56%)	19 (30%)
Civilian shooter	341 (44%)	45 (70%)

Given the composition of the background population, males were significantly over-represented and females under-represented as victims of gun homicides by police and civilians (The CSS, 1991[ii]). <sup>87</sup>

Table 8.4.8: Shooters' Police Status x Victims' Race-Groups

	African victim	Coloured victim	Asian victim	White victim
Police shooter	268 (70%)	176 (45%)	1 (12%)	2 (4%)
Civilian	114 (30%)	215 (55%)	8 (88%)	49 (96%)

Given the composition of the background population, Africans were significantly over-represented and whites under-represented as victims of homicides by police and civilian shooters. But coloureds were significantly under-represented as victims of police shooters (The CSS, 1991[ii]). <sup>88</sup>

Table 8.4.9: Shooters' Police Status x Victims' Ages-Groups

	Child victim	Adolescent	Adult victim	Elderly
Police shooter	14 (58%)	94 (71%)	337 (51%)	2 (18%)
Civilian shooter	10 (42%)	39 (29%)	328 (49%)	9 (82%)

Given the composition of the background population, those aged between 19 and 59 were significantly over-represented, whereas those over 59 were under-represented as victims of

<sup>86</sup> Treat with caution,  $M = 42\%$  (583).

<sup>87</sup>  $P < 0.01$ ,  $X^2 = 630.6$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 11.1, 14.1, -13.8, -10.8$ .

Treat with caution,  $M = 40\%$  (550).

<sup>88</sup>  $P < 0.01$ ,  $X^2 = 579.8$ ,  $df = 3$ . Not significant for PSOs:  $P > 0.01$ ,  $X^2 = 7.7$ ,  $df = 3$ .

Fwp  $< 0.01$ ,  $z = 4.8, 19.9, -10.6, -5.2, -4.2$ . Treat with caution,  $M = 40\%$  (550).

homicides by both police and civilians. By contrast, those younger than 19 were significantly under-represented as victims of civilian shooters, whereas those younger than 13 were under-represented as victims of police shooters (The CSS, 1991[ii]).<sup>89</sup>

Table 8.4.10: Shooters' Police Status x Victims' Employment Status

	Victim employed	Victim not employed
Police shooter	146 (44%)	186 (58%)
Civilian shooter	184 (56%)	132 (42%)

Given the rate of employment in the background population, gainfully employed people were significantly over-represented as victims of homicides by civilian shooters (The Ministry for Welfare and Population Development, 1995).<sup>90</sup>

Table 8.4.11: Shooters' Police Status x Victims' Police Status<sup>91</sup>

	Police victim	Civilian victim
Police shooter	6 (26%)	441 (55%)
Civilian shooter	17 (74%)	366 (45%)

#### Shooters' Police Status and Other Characteristics

Table 8.4.12: Shooters' Police Status x Sexes

	Male shooter	Female shooter
Police shooter	446 (55%)	0 (0%)
Civilian shooter	372 (45%)	9 (100%)

Given the composition of the background population, males were significantly over-represented and females under-represented as shooters irrespective of their police status (The CSS, 1991[ii]).<sup>92</sup>

<sup>89</sup>  $P < 0.01$ ,  $X^2 = 274.7$ ,  $df = 3$ . Not significant for PSOs:  $P > 0.01$ ,  $X^2 = 2.6$ ,  $df = 1$ .

Fwp  $< 0.01$ ,  $z = 8, 5.8, -4, -5.7, -3.7, -7.4, -7.7$ . Treat with caution,  $M = 40\%$  (550).

<sup>90</sup>  $P < 0.01$ ,  $X^2 = 60.2$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 5.8$ .

Treat with extreme caution,  $M = 53\%$  (736) and the background statistic was a national estimate for 1995.

<sup>91</sup>  $M = 40\%$  (550). Excluding nine defence force members.

<sup>92</sup>  $P < 0.01$ ,  $X^2 = 825.9$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 13.5, 15.5, -13.3, -15.1$ .

Including PSOs.  $P < 0.01$ ,  $X^2 = 26$ ,  $df = 1$ . Fwp  $< 0.01$ ,  $z = 3.6$ .

Treat with caution,  $M = 40\%$  (556).

Table 8.4.13: Shooters' Police Status x Race-Groups

	African shooter	Coloured	Asian shooter	White
Police shooter	85 (48%)	53 (22%)	0 (0%)	213 (72%)
Civilian shooter	93 (52%)	191 (88%)	9 (100%)	84 (28%)

Given the composition of the background population, whites were significantly over-represented and coloureds under-represented among police shooters in this sample (The CSS, 1991[ii]).<sup>93</sup>

Table 8.4.14: Shooters' Police Status x Age-Groups

	Child shooter	Adolescent	Adult shooter	Elderly
Police shooter	0 (0%)	0 (0%)	447 (57%)	0 (0%)
Civilian shooter	2 (100%)	19 (100%)	337 (43%)	12 (100%)

Given the composition of the background population, adults were significantly over-represented whereas people over 59 and under 19 were under-represented as shooters irrespective of their police status (The CSS, 1991[ii]).<sup>94</sup>

#### Shooters' Police Status and Characteristics of Shooters' Firearms

Table 8. 4.15: Police Status x Handguns<sup>95</sup>

	Handgun	Long gun
Police shooter	219 (42%)	210 (88%)
Civilian shooter	306 (58%)	30 (12%)

Table 8.4.16: Shooters' Police Status x Automatic Status of Guns<sup>96</sup>

	Automatic gun	Semi-automatic gun	Non-automatic gun
Police shooter	12 (92%)	173 (59%)	222 (58%)
Civilian shooter	1 (8%)	119 (41%)	164 (42%)

<sup>93</sup>  $P < 0.01$ ,  $X^2 = 285.25$ ,  $df = 3$ . Not significant for PSOs:  $P > 0.01$ ,  $X^2 = 1.1$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 12.8$ ,  $-9.9$ . Treat with caution,  $M = 47\%$  (655).

<sup>94</sup>  $P < 0.01$ ,  $X^2 = 562.4$ ,  $df = 3$ . Fwp  $< 0.01$ ,  $z = 12.8$ ,  $9.3$ ,  $-6$ ,  $-9$ ,  $-9.2$ ,  $-5.9$ ,  $-8.1$ . No tests for PSOs because they were adult by definition.

Treat with caution,  $M = 41\%$  (566).

<sup>95</sup> Treat with caution,  $M = 46\%$  (619).

<sup>96</sup> Treat with caution,  $M = 50\%$  (693).

Table 8.4.17: Shooters' Police Status x Ammunition Type <sup>97</sup>

	Bullets	Pellets
Police shooter	249 (41%)	198 (88%)
Civilian shooter	360 (59%)	26 (12%)

Table 8.4.18: Shooters' Police Status x Main Motives <sup>98</sup>

	Accident	Arrest	Self defence	Property defence	Lawful	Unlawful
Police	14 (27%)	156 (90%)	170 (58%)	5 (45%)	51 (100%)	4 (4%)
Civilian	38 (73%)	17 (10%)	121 (42%)	6 (55%)	0 (0%)	103 (96%)

### Shooters' Police Status and Indicators of Restraint

Table 8.4.19: Shooters' Police Status and Minimum Force Indicators <sup>99</sup>

	Police Shooters	Civilian shooters	PSO shooters
One shot	153 (47%)	147 (48%)	10 (40%) <sup>100</sup>
Informed of arrest	11 (10%)	1 (6%)	0 (0%) <sup>101</sup>
Oral warning	83 (25%)	59 (18%)	8 (35%) <sup>102</sup>
Warning shot	85 (25%)	63 (19%)	11 (46%) <sup>103</sup>
Aiming at legs	58 (17%)	47 (14%)	5 (20%) <sup>104</sup>
Alternatives <sup>105</sup>	185 (53%)	101 (30%)	9 (36%) <sup>106</sup>

<sup>97</sup> Treat with caution, M = 40% (550).

<sup>98</sup> Treat with caution, M = 48% (669). Defences not applicable to civilians and those where N = 1 was excluded: crowd dispersal (14), maintaining public order (16), obedience to orders (2), necessity (1) and denial (1). The leading motive (75%) for PSO shooters was self defence.

<sup>99</sup> Positives only. Percentages not column-wise, see denominators provided.

<sup>100</sup> D = 328, 306, 25. Treat with caution, M = 54% (751).

<sup>101</sup> D = 111, 17, 2. M = 27% (47).

<sup>102</sup> D = 329, 335, 23. Treat with caution, M = 51% (715).

<sup>103</sup> D = 335, 334, 24. Treat with caution, M = 51% (709).

<sup>104</sup> D = 346, 337, 25. Treat with caution, M = 50% (699).

<sup>105</sup> The foot chase was the most common less-than-lethal alternate means for police, civilian, and PSO shooters.

<sup>106</sup> D = 347, 336, 9. Treat with caution, M = 50% (699).

Table 8.4.20: Shooters' Police Status and Proportionality Indicators <sup>107</sup>

	Police shooters	Civilian shooters	PSO shooters
Dangerous victim	95 (27%)	149 (11%)	14 (25%) <sup>108</sup>
V threatened life	89 (30%)	34 (47)	6 (64%) <sup>109</sup>
Shooting did not endanger others	111 (33%)	127 (41%)	8 (62%) <sup>110</sup>
(1+2) or (1+3)	50 (18%)	35 (13%)	3 (12%) <sup>111</sup>
Victims:			
- Adult	339 (76%)	337 (87%)	20 (77%) <sup>112</sup>
- Armed	166 (53%)	119 (38%)	16 (62%) <sup>113</sup>
- Armed with gun	54 (17%)	46 (15%)	2 (8%) <sup>114</sup>
- Threatened	236 (71%)	147 (46%)	17 (71%) <sup>115</sup>
- Not fleeing	150 (42%)	254 (80%)	7 (28%) <sup>116</sup>
- Not shot in back	228 (56%)	297 (80%)	NA <sup>117</sup>
- Crime suspect	370 (94%)	138 (42%)	19 (83%) <sup>118</sup>
- Violent suspect	210 (53%)	81 (25%)	11 (48%) <sup>119</sup>

**Shooters' Police Status and the Legal Process**Table 8.4.21: Shooters' Police Status x Types of Legal Proceeding <sup>120</sup>

	Inquest	Criminal trial
Police shooter	412 (66%)	25 (13%)
Civilian shooter	208 (34%)	173 (87%)

<sup>107</sup> Positives only. Percentages not column-wise, see denominators provided.

<sup>108</sup> D = 315, 320, 22. Treat with caution, M = 50% (688).

<sup>109</sup> D = 333, 318, 24. Treat with caution, M = 47% (586).

<sup>110</sup> D = 334, 309, 13. Treat with caution, M = 53% (740).

<sup>111</sup> D = 272, 264, 26. Treat with caution, M = 53% (740).

<sup>112</sup> D = 447, 386, 26. Treat with caution, M = 41% (566).

<sup>113</sup> D = 316, 317, 26. Treat with caution, M = 50% (700).

<sup>114</sup> D = 316, 317, 26. Treat with caution, M = 50% (700).

<sup>115</sup> D = 333, 318, 24. Treat with caution, M = 50% (692).

<sup>116</sup> D = 356, 317, 25. Treat with caution, M = 50% (693).

<sup>117</sup> D = 406, 371. Treat with caution, M = 44% (606).

<sup>118</sup> D = 395, 326, 23. Treat with caution, M = 45% (631).

<sup>119</sup> D = 395, 326, 23. Treat with caution, M = 45% (631).

<sup>120</sup> Treat with caution, M = 41% (565).



Table 8.4.22: Shooters' Police Status x Types of Inquest <sup>121</sup>

	Informal inquest	Formal inquest
Police shooter	318 (65%)	94 (73%)
Civilian shooter	173 (35%)	35 (27%)

Table 8.4.23: Shooters' Police Status x Types of Trial Court <sup>122</sup>

	Regional Magistrates' Court	Supreme Court
Police shooter	10 (16%)	15 (11%)
Civilian shooter	54 (84%)	119 (89%)

Table 8.4.24: Shooters' Police Status x Legal Classifications <sup>123</sup>

	Police shooters	Civilian shooters
<b>Justifiable:</b>		
- Accident	6 (2%)	7 (6%)
- Arrest	141 (45%)	18 (17%)
- Self defence	131 (42%)	66 (61%)
- Property defence	0 (0%)	4 (4%)
- Lawful unspecified	36 (11%)	13 (12%)
<b>Criminal:</b>		
- Culpable homicide	5 (14%)	28 (15%)
- Murder	9 (24%)	71 (37%)
- Unlawful unspecified	23 (62%)	92 (48%)

Table 8.4.25: Shooters' Police Status x Shooters Convicted <sup>124</sup>

	Convicted	Acquitted
Police shooter	15 (12%)	11 (13%)
Civilian shooter	109 (88%)	71 (87%)

Table 8.4.26: Shooters' Police Status x Types of Homicide Conviction <sup>125</sup>

	Culpable homicide	Murder
Police convicted	5 (15%)	9 (11%)
Civilian convicted	28 (85%)	71 (89%)

<sup>121</sup> M = 23% (186).<sup>122</sup> M = 0.<sup>123</sup> Treat with caution, M = 41% (565).

Defences not available to civilians and those with N = 1 were excluded:

crowd dispersal (9), maintaining public order (18), obedience to orders (4), necessity (1).

<sup>124</sup> M = 0.<sup>125</sup> M = 0.

### Political Motivation and General Characteristics

Table 8.5.1: Political Motivation x Years - Politically Motivated and Non-Political Firearm Homicides, 1984 – 1991 <sup>126</sup>

Years	Political homicides	Political hom. per 100000	Non-political homicides	Non-political Per 100000
1984	2	0.1	46	3
1985	84	5	66	4
1986	34	2	72	5
1987	14	1	80	5
1988	12	1	59	4
1989	32	2	85	5
1990	28	2	92	5
1991	78	4	128	7

Table 8.5.2: Political Motivation x Number of Shooters <sup>127</sup>

	Single shooter	At least two shooters
Politically motivated	189 (25%)	43 (68%)
Not political	574 (75%)	20 (32%)

Table 8.5.3: Political Motivation x Areas <sup>128</sup>

	Black areas <sup>129</sup>	White areas	Racially mixed	Non-residential
Political	280 (40%)	4 (6%)	0 (0%)	0 (0%)
Not political	424 (60%)	145 (94%)	42 (100%)	12 (100%)

Table 8.5.4: Political Motivation x Places <sup>130</sup>

	Victim's home	V's workplace	Indoors	Outdoors
Politically	13 (14%)	7 (17%)	10 (7%)	174 (39%)
Not political	83 (86%)	33 (83%)	131 (93%)	271 (61%)

<sup>126</sup> M = 26% (325).

<sup>127</sup> Treat with caution, M = 33% (406).

<sup>128</sup> M = 27% (330).

<sup>129</sup> Comprising African townships (234 political, 142 non-political) and coloured townships (46 political and 282 non-political).

<sup>130</sup> Treat with caution, M = 42% (515).

## CHAPTER NINE

### DISAGGREGATING ISSUES AND CLARIFYING PROBLEMS

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#### INTRODUCTORY RATIONALE

A social problem can be defined in many ways, each formulation has a particular emphasis which implies certain kinds of interventions (Majchrzak, 1984). Gun-related death, injury and crime are the main reasons that firearms have been considered socially problematic. Possession and use are the two key dimensions around which constructions of guns as a social problem have been framed. Firearms can be used in many ways and with various consequences. They can be effective weapons without actually being fired and their mere presence does not inevitably result in death or injury. For instance, confrontations can be defused and crimes committed using only the threat of a firearm to coerce compliance. Many people derive a sense of security by keeping guns which they never fire. So whilst the presence of a firearm is of course necessary for a shooting, it is not a sufficient condition; the crucial factor is whether a gun is fired.

Nevertheless, it is *possession* that has prevailed as the focal issue in constructions of firearms as a social problem. Since the sixties an increased prevalence of guns has been singled out as a central cause of rising rates of crime and violence in numerous societies. Despite opposition, this approach has dominated policy in countries like the USA, Canada, Australia and South Africa. Policy interventions based on this formulation, generically referred to as gun control, have been designed to reduce civilian firearm ownership. The most common basic approach has been to legally limit private possession to people considered unlikely to abuse guns;<sup>1</sup> usually adults with no history of mental illness, criminal or violent behaviour, and to criminally sanction those who possess guns illegally and those who otherwise abuse firearms. Although a substantial amount of research has been conducted on the hypothesised causal link between private gun ownership and violence/crime, the knowledge yield has been somewhat effete, both in conceptual and operational terms. The accumulated research findings have shown that the mere presence of a gun is not necessarily the key determinant of gun-related crime/violence,<sup>2</sup> and that decreasing the prevalence of firearms is not a particularly effective intervention for reducing violence or serious crime.<sup>3</sup> Most interventions

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1 Although the complete prohibition of private gun ownership has become more popular.

2 This is not to say that the availability of guns has *no* effect on the probability of injury and death, but that it plays a significant role only in certain circumstances like suicides and bar-room brawls.

3 See Chapter Two.

have failed to diminish and maintain reduced levels of private gun ownership. Even when this has been achieved, it has *not* significantly lowered rates of homicide, robbery or gun accidents.<sup>4</sup> Indeed, research has indicated that increased gun prevalence is more likely to be a *consequence* than a cause of heightened crime and violence (e.g. Turner & Leyens, 1992).<sup>5</sup> Whatever the relationship between these variables, it is neither simple nor direct (Wright *et al*, 1983). A complex interplay of individual, situational, organisational, community factors and broader social forces determine whether a shot is fired (Fyfe, 1981[c]).

The conventional gun control approach is still dominant in South Africa in the mid-nineties; clearly evident in popular and academic discourse and in current state interventions.<sup>6</sup> Violence has not abated significantly since the Apartheid State was replaced and there has been an upward trend in the crime rate. An increased prevalence of illegal guns has been cast as a key determinant, and illegal possession and firearm crime have been prioritised in the National Crime Prevention Strategy (NCPS). Since 1994 a politically powerful prohibitionist organisation has been developing and a public gun-control-controversy has been taking shape. Indeed, the nineties have seen the issue of firearms brought to the fore as a leading social problem in this country and it is worrying to find that gun prevalence is still being cast as *the* problem in relation to rising crime/violence. For this fundamental assumption has failed to achieve even reasonable empirical support, despite 35 years of research effort, and interventions derived from this conception have been notably ineffectual at reducing serious forms of violence and crime, like homicide and robbery, which are the most common violent offences committed with firearms in South Africa.<sup>7</sup>

The current era of reconstruction and development constitutes a critical juncture for the refashioning of social problems. Hence, reframing firearms as a social problem was embraced as the guiding objective of this work. The research was purposely focused on gun *use* instead of possession or prevalence, and set out to examine *whether*, and in what respects, the use of firearms was problematic. This involved a systematic disaggregation of a complex set of issues in order to construct an alternate empirically based conception of the problems posed by firearms in the context of contemporary South Africa; hopefully one that will inform interventions that are effective at reducing gun-related violence.

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4 Although it has decreased the rate of gun suicide and in some cases aggravated assaults.

5 This accounts for the strong positive correlation between the variables.

6 See Chapter Three.

7 According to conviction rates. See Table 3.9.

## FIREARMS AS A CAUSE OF DEATH

It is important to view the threat posed by firearms in relation to other comparable threats. In South Africa, as in the USA, firearms have been one of the leading causes of non-natural death for some time.<sup>8</sup> In the local jurisdiction of metropolitan Cape Town guns have been one of the top four causes of non-natural deaths, at least since the mid-seventies. But transport accidents and sharp injuries have long been the two leading causes. In other words, motorised vehicles and sharp objects have constituted greater threats to public safety than guns.<sup>9</sup>

What is noteworthy is the growing role that firearms have played as a cause of non-natural death, particularly since the mid-eighties. Between 1984 and 1994 the percentage of non-natural fatalities resulting from firearms increased while the proportions due to transport accidents and sharp and blunt injuries declined.<sup>10</sup> Over this same period, surpassing blunt injuries, firearm injuries became the third leading cause of non-natural death in Cape Town. Furthermore, the annual rate of firearm fatalities increased substantially between 1984 and 1991, rising from seven to 17 deaths per 100000 people p.a. and reaching 20 per 100000 p.a. by 1994.<sup>11</sup> The upward trend in gun deaths in this area over the 10 years since 1984 has been produced by a substantial growth in firearm *homicides*; from five to 15 deaths per 100000 people p.a.<sup>12</sup>

The temporal pattern evident in Cape Town also characterised South Africa as a whole, although the growth-gradient for the nation was not quite as steep. The annual national rate of firearm fatalities rose from five to 12 per 100000 p.a. between 1984 and 1991; with the rate of gun homicides increasing from three to 10, while the firearm suicide rate stayed at around two per 100000 p.a.<sup>13</sup> Notably, however, the rate of gun death in Cape Town was consistently higher than the national rate at this time, averaging 11 and six fatalities per 100000 p.a. resp.<sup>14</sup> Interestingly, in 1986, the Cape Town rate of 11 firearm fatalities per 100000 p.a. was closer to the North American rate of 14 than it was to the South African rate of five.<sup>15</sup>

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8 About 80% of deaths each year are due to *natural* causes, see The CSS (1993[i]).

9 See Table 3.5.

10 See Table 3.5.

11 See Table 7.1. and The MRC (1995) resp.

12 While the gun suicide rate remained at around two per 100000 p.a, see Tables 7.5 and 7.2 resp.

13 See Table 3.1.

14 See Tables 7.1 and 3.1.

15 See Table 7.1, Time Magazine (17 July 1989:29) and Table 3.1. resp.

## UNINTENTIONAL FATAL SHOOTINGS <sup>16</sup>

### Prevalence

Accidental shootings accounted for a tiny proportion (one per cent) of firearm fatalities that occurred in Cape Town between 1984 and 1991. Relatively speaking, there was one unintentional fatal shooting to every 25 firearm suicides and every 94 intentional firearm homicides. Indeed there were only 13 fatal gun accidents in this area over the entire eight year period,<sup>17</sup> which amounted to an average rate of 0.1 deaths per 100000 people p.a. -- literally one in a million! The average annual rate of death from firearm accidents in Cape Town was lower than the average for South Africa over this period; 0.1 and 0.4 per 100000 resp. However, after 1988 the annual national mortality rate for unintentional shootings decreased markedly, dropping to 0.1 per 100000 in 1990, and remained at this low level throughout 1991 and 1992.<sup>18</sup>

During the mid-eighties fatal firearm accidents seemed to be a more significant cause of gun death in South Africa than in the USA.<sup>19</sup> However, this apparent difference may no longer be present as the rate of fatal gun accidents in this country declined between the mid-eighties and the early nineties;<sup>20</sup> the five year national average rate fell from 0.5 to 0.2 per 100000 p.a. and the proportion of firearm fatalities due to accidents decreased from nine to three per cent.<sup>21</sup> From the available data there was a key difference between the high risk groups in South Africa and North America:<sup>22</sup> whites were a vulnerable victim-group in South Africa, including Cape Town, but not in the USA where black people were at greater risk (McDowall & Loftin, 1986). However, a similar age-group was most at risk in both of these countries, namely 15 to 29 year olds in the RSA and 15 to 34 year olds in the USA (The CSS, 1986[i], 1986 [ii]; McDowall & Loftin, 1986 resp.). Furthermore, accidental shootings were responsible for a substantially lower proportion of gun deaths among the Cape Town police (0) than among the North American police (25%), at least in the early nineties (e.g. Behm, 1992).

### Characteristics

Whites (42%), males (92%) and adults (92%) were over-represented as perpetrators of unintentional fatal shootings in Cape Town between 1984 and 1991. Although

16 Due to the very limited number of cases the statistical significance of findings from unintentional shootings were not established.

17 Given the very limited sample size a temporal analysis was not conducted.

18 See Table 3.1.

19 Accounting for an average of nine per cent of firearm fatalities in the RSA between 1983 and 1987 and two per cent in the USA in 1986. The 1986 figure for the RSA was not used, because in that year the level of firearm accidents was unusually high. See Table 3.3, Turner and Leyens (1992) resp.

20 After a marked peak in the rate in 1987 and 1988.

21 See Tables 3.1 and 3.3 resp.

22 At least during the mid-eighties.

civilians and police were responsible for a similar number of these shootings,<sup>23</sup> police officers were over-represented as perpetrators of fatal firearm accidents considering the relative size of this group in the background population. It was predominantly (83%) on-duty officers who were involved in this kind of shooting. Handguns were most frequently employed, with semi-automatic pistols typical (83%) among police, and revolvers (43%) and pistols (43%) equally common among civilians. Licensed firearms were used in all of the unintentional shootings perpetrated by police officers whilst civilians employed similar numbers of unlicensed (57%) and licensed (43%) guns.

Adults (85%), males (92%) and civilians (92%) were the most likely victims of unintentional fatal shootings in this sample. It was particularly encouraging to find that children were *not* at increased risk of such shootings, as this has been the case in various countries (e.g. Kopel, 1993). Both the under 13 and under 19 age-groups were under-represented in this Cape Town sample. Over the eight year period there were only two fatal gun accidents involving seven and 11 year old victims. Considering their representation in the background population, Africans and whites were also over-represented as victims of fatal gun accidents in this sample.<sup>24</sup> Furthermore, Africans were at greater risk from police shooters and whites were more likely to fall victim to civilian shooters.<sup>25</sup>

The profile of victims of unintentional fatal shootings in Cape Town was similar to the victim profile for South Africa as a whole in that males and whites were high-risk groups in both of these jurisdictions.<sup>26</sup> However, the local victim profile differed from the national profile in so far as it was Africans not coloureds,<sup>27</sup> and those aged between 21 and 40 rather than 15 and 29, who were more prone to fatal gun accidents in this city.

Most (57%) of the fatal firearm accidents involving civilian shooters took place at victims' homes and involved friends and family as shooters. This was one of the ways in which privately owned guns constituted a threat to significant others in the home. By contrast, the unintentional shootings perpetrated by police officers occurred in various locations and generally involved strangers (67%). A qualitative examination of the circumstances in which these unintentional shootings took place revealed three key precipitating scenarios: (1) a gun going off during a physical struggle for possession of the weapon (46%); (2) a bystander being shot when police fired at a fleeing suspect (23%); and (3) a bystander being shot when a gun went off unexpectedly while being handled (23%). The first type of occurrence was common

23 That is, seven and six deaths resp. and one by a PSO.

24 That is, 23% (3) Africans, 46% (6) coloureds and 31% (4) whites.

25 That is, 50% (3) and 57% (4) resp.

26 See Table 3.4.

27 Noteworthy because a particularly high proportion of the coloured population were resident in Cape Town due to the coloured labour preference policy applied in this area under Apartheid.

in unintentional shootings perpetrated by both civilians and police. But the second characterised accidental shootings perpetrated by police (50%) and the third by civilians (43%).

However, these lawful unintentional shootings comprised only 25% of the incidents that shooters *claimed* had been unintentional; the Courts found the other 75% to be unlawful. Interestingly, there was some overlap in the main precipitants of these two categories of accidental shooting: (1) a bystander shot when a gun being handled went off unexpectedly (69%); (2) a bystander shot in crossfire between two other parties (17%); (3) a gun going off during a physical struggle for possession of the weapon (7%). A notable difference was that the unlawful gun accidents involved a much lower proportion (13%) of police officers than the lawful accidents (46%).

### **Problematic Aspects and Suggested Interventions**

In the context of Cape Town between 1984 and 1991, gun accidents were insignificant as a cause of death when viewed in relation to intentional firearm homicides and suicides. Unintentional shootings accounted for a consistently low proportion (one to two per cent) of gun deaths across various groups of victims: males and females; adults, youths and children; Africans, coloureds and whites;<sup>28</sup> police and civilians. Similarly, fatal firearm accidents did not constitute a significant problem in the country as a whole at this time; the already low annual national rate was characterised by a downward trend. However, a finer-grained analysis of fatal gun accidents in Cape Town over this eight year period revealed the following problematic issues: (1) on-duty police officers were over-represented as perpetrators of unintentional fatal shootings; (2) most police victims were innocent third parties, killed during officers' attempts to arrest fleeing suspects; and (3) civilians frequently killed others unintentionally by handling their guns in an unsafe manner.

Any over-representation of police as perpetrators of unintentional fatal shootings is an issue worth addressing. The public often view such incidents as indicative of a lack of restraint which can lower confidence in the police and reduce co-operation by civilians. It has also been argued convincingly that the police ought to serve as role models for the proper use of firearms (e.g. Kleck, 1986[a]). It is thus felicitous for police managers to ensure that unintentional shootings by officers are kept to a minimum. In the USA perceived racism in police practice has had highly destructive consequences.<sup>29</sup> This sample of fatal gun accidents did nothing to dispel the presumption of police racism on the part of the SAP: all victims were black and white officers were over-represented as perpetrators. Furthermore, in the bulk of the unintentional shootings by police, officers killed innocent bystanders by firing at fleeing suspects. These incidents were clear violations of the law,<sup>30</sup> not to

28 None of the victims or perpetrators of these shootings were Asian.

29 See Chapter Four.

30 In 1987 it was established in South African case-law that, shooting to effect an



mention the underlying principle of proportionality. It is thus alarming to find that these shootings were deemed to be lawful! Similarly, despite the fact that it was an offence to handle a firearm in an unsafe manner at this time and that this was the cause of almost half of the unintentional shootings by civilians in this sample, the Courts still justified these incidents as accidental. This seems to indicate some leniency in the application of legal requirements for the safe-keeping/handling of firearms.

The period after 1991 was not examined directly in this study. It is, therefore, important that unintentional shootings be monitored in the contemporary context. After all, the aspects revealed as problematic by this investigation may no longer be the key issues. For instance, the victim and perpetrator profiles have probably changed as whites no longer constitute a majority in the police force or among civilian gun owners. Also gun accidents may have increased in South Africa since 1991. A lack of training and experience in the safe-handling of guns was found to heighten the risk of gun accidents in the USA and Canada (e.g. McDowall & Loftin, 1986; Stenning & Moyer, 1981). And in this country there has been a sudden growth in the number of new gun owners, many of whom lack training and experience in handling firearms (e.g. *The Sunday Independent*, 6 October 1996). Under these circumstances the following basic preventative measures would seem prudent: compulsory standardised training for gun licence applicants and regular refresher courses for licensees.<sup>31</sup> Firearm licensees should be required to renew their licences every two to three years and one of the criteria ought to be proof that a licensee has completed a minimum period of shooting practice each month at a suitable venue. The borrowing of firearms by unlicensed persons should be outlawed<sup>32</sup> and temporary possession of guns by those without gun licences should be permitted only for the purposes of training and under the direct supervision of a qualified instructor.

In view of the current community-assisted style of policing in South Africa, which depends upon a high level of public support, even a small number of controversial unintentional police shootings could undermine working relations between police and the communities they serve. This study suggested that the Courts had not strictly enforced the legal restriction against police endangering bystanders when shooting at suspects. It would therefore seem advisable to include an explicit requirement to this effect in the regulations governing the use of deadly force by the SAPS and PSOs. The relative threat that crime prevention poses to innocent members of the public must also be taken into account in reforming the law

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arrest or prevent an escape was *not* legally justifiable if a third party was foreseeably endangered. See Dendy (1988) and Knobel (1988).

31 See Hansson (1996) for details.

32 Such temporary possession has been permitted under Section 8 of The Arms & Ammunition Act 75 of 1969 as amended.

governing arrest and the prevention of escape. To conclude, up-to-date monitoring of unintentional shootings in the South African context is imperative. However, it is *all* shots fired unintentionally that ought to be examined and not just those that prove fatal, for differences in outcome constitute differences in problems and interventions.

## FIREARM SUICIDES

### Prevalence

In Cape Town the annual mortality rate due to firearm suicides remained stable between 1984 and 1991 at around two deaths per 100000, but the relative significance of suicides as a cause of firearm fatalities declined markedly.<sup>33</sup> From the mid-eighties the ratio of firearm suicides to homicides decreased from one in one to one in four.<sup>34</sup> Although homicides were clearly a more significant cause of gun death, suicidal shootings accounted for a substantial 20% of firearm fatalities that occurred in this area.<sup>35</sup> Furthermore, guns have long been the key means of suicide in Cape Town and in the country as a whole, generally accounting for around a third of all suicides.<sup>36</sup> However, firearms played their biggest role in suicides during the early nineties: the proportion of suicides perpetrated with guns rose from 26% in 1989, to 41% and 37% in 1990 and 1991 resp, but by 1992 this percentage had returned to the pre-war level of 29%.<sup>37</sup>

During the period in question, the average annual rate of firearm suicides in Cape Town was the same as the average for South Africa, and neither of these rates fluctuated greatly.<sup>38</sup> Yet suicide seems to have been *less* significant as a cause of firearm fatalities in this city than it was nationally at the time: whilst suicides accounted for an average of 32% of firearm fatalities nationwide, the local average was only 20%.<sup>39</sup> This difference no longer exists because the proportion of suicides attributable to firearms in South Africa dropped by 29% after 1984 and in 1992 suicides comprised only 12% of gun deaths.<sup>40</sup> It seems that homicide overshadowed suicide as a cause of firearm death, both at micro- and macro-levels. In the mid-eighties the rate of firearm suicide in the USA was the highest in the world, at eight per 100000 p.a, while South Africa had a substantially lower rate of two.<sup>41</sup> At this time suicide was more significant as a cause of firearm fatalities in the

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33 See Table 7.2.

34 And this was still the case as recently as 1994. See Table 3.6 and The MRC (1995).

35 See Table 7.2.

36 See Table 3.2.

37 See Table 3.2.

38 That is, two per 100000 p.a. See Table 3.1.

39 See Table 3.3.

40 See Table 3.3.

41 See Table 3.1. and Time Magazine (17 July 1989).

USA (55%) than it was in the RSA (37%).<sup>42</sup> By contrast, the rate of suicide among the SAP was generally higher than among the North American police (e.g. Behm, 1992; Geller & Scott, 1992).<sup>43</sup>

### Characteristics

Males, whites, adults, police officers and people who were gainfully employed,<sup>44</sup> were the groups most prone to firearm suicide in Cape Town between 1984 and 1991. Suicides were responsible for a relatively low proportion of gun deaths among all race-groups other than whites for whom suicide was the leading cause of firearm fatalities. The comparable figures were: 52% for whites, 17% for Asians, six per cent for coloureds and two per cent for Africans. It was promising to find that children and adolescents were under-represented as suicide victims in this sample (6%) and that suicides were responsible for a lower proportion of gun deaths among the youthful than among adults. While adults were over-represented as victims of gun suicide, those aged between 26 and 45 were most vulnerable to suicide by this method. Notably, older adults were the only age-group in which suicide was the leading cause of firearm fatalities, and those aged between 63 and 75 were particularly prone.

In Cape Town, as in many jurisdictions, police officers were more likely to commit suicide using firearms and suicides accounted for a higher proportion of gun deaths among police (37%) than civilians (19%). This also appeared to be the case countrywide (The Commissioner of the SAP, 1993). By comparison, the PSOs in this study were *not* characterised by an elevated risk of gun suicide. In fact suicides appeared to be a less significant cause of gun death among PSOs (12%) than for police and civilians in general.<sup>45</sup>

From the mid-eighties to the early nineties males, whites and police officers were high risk groups for gun suicides, both locally and nationally.<sup>46</sup> In South Africa as a whole, however, a younger age-group (20 to 39) were vulnerable to this kind of suicide (The CSS, 1984[i] to 1991[ii]).<sup>47</sup> In Cape Town there was a higher percentage of coloured and a lower percentage of African victims than in the country

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42 See Table 3.3. and Time Magazine (17 July 1989).

43 At its peak in 1992 the suicide rate for the SAP was 83 per 100000 p.a. as compared to 17 for police in the USA (The Commissioner of the SAP, 1993; Geller & Scott, 1992 resp).

44 The fact that these three groups were over-represented increases the plausibility of the statistically questionable finding that the gainfully employed were over-represented as suicide victims.

45 These deductions should be treated with caution as there were only four PSO suicides in the sample.

46 See Table 3.4 and The Commissioner of the SAP (1993).

47 And not those aged between 26 and 45, 63 and 75, as was the case in Cape Town.

as a whole.<sup>48</sup> In addition, the proportion of females who died in gun suicides was lower and the proportion of males was higher in Cape Town than it was in South Africa.<sup>49</sup>

The victims in this sample tended to commit suicide in their homes. This included police officers and PSOs, the bulk of whom shot themselves while off duty.<sup>50</sup> Most victims did *not* drink alcohol before committing suicide but those who did tended to consume large quantities. The majority shot themselves once in the side or front of the head and did not foreseeably endanger anyone else in doing so. Handguns and live ammunition were typical, particularly 0.38 inch revolvers and 9mm semi-automatic pistols. Fully-automatic firearms were rarely employed in suicides and the two victims who used such guns had access because they were members of the defence forces. In designing interventions it is crucial to know where people obtain the guns they use to commit suicide. Unfortunately this study did not enable many dependable conclusions in this respect. Even the most basic information -- whether victims were in legal possession of the firearms they used -- was missing for 51% of the suicide cases. What did emerge was that a high proportion (67%) of the adolescents in this sample committed suicide using guns that were licensed to their parents and kept in their homes.

In some cases reasons for suicide were given mainly in suicide notes or as post-hoc attributions by significant others. Since the reliability of these data is questionable, the following comments are speculative.<sup>51</sup> The top three reasons provided for gun suicides in this sample were: (1) depression and/or alcohol dependency (37%), (2) serious illness and/or disability (27%), and (3) problems in intimate relationships (25%). The key reasons differed across social groups: for instance, the leading reason for police suicides was difficulty in intimate relationships, but it was depression/alcohol dependency among civilians, serious illness/disability among older people, and depression/alcohol dependency among adolescents and adults.

During the mid-eighties in South Africa there was heightened publicity on the phenomenon known as family murder; when a perpetrator sets out to kill his/her spouse and children and then commits suicide (Graser, 1992, 1987). Only a small proportion (6%) of firearm suicides in this study were murders followed by suicides,<sup>52</sup> and those involving intimate partners rather than whole families were more common.<sup>53</sup> Males were the key perpetrators of family murder-suicides (71%)

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48 That is, 11% and four per cent, four and eight per cent resp. See Table 3.4.

49 That is, 16% and 20%, 84% and 80% resp. See Table 3.4.

50 It is logical that most gun suicides occurred in white residential areas because the majority of victims were white and committed suicide in their homes.

51 Particularly, since 47% (148) of these data were missing.

52 That is, 19 cases.

53 That is, 50% involved intimates, 33% families and 17% friends. See Vetten (1995) on intimate homicides in Gauteng.

and intimate murder-suicides (100%),<sup>54</sup> and whites were over-represented as victims and perpetrators in both of these kinds of shootings.<sup>55</sup> There was also some indication that murder-suicides were more significant among police officers, accounting for 13% of the police and only five per cent of the civilian suicides.

### **Problematic Aspects and Suggested Interventions**

This study revealed two key problematic issues in relation to firearm suicides in Cape Town during the latter half of the eighties. Suicides accounted for a sizable proportion of gun deaths and many might have been averted by timely and appropriate intervention. Unfortunately, given the high level of method substitution in suicide, merely decreasing access to guns is unlikely to substantially reduce the overall suicide rate. However, it is likely to lower the rate of gun suicide. In particular, firearms in the home appear to increase the risk of gun suicide among residents, and especially adolescents (Kellerman *et al*, 1992, Brent *et al*, 1991).<sup>56</sup> And although a person without a gun who feels suicidal is likely to resort to alternate means, some of the substitutes may be less likely to cause death. With shooting there is rarely a second chance.<sup>57</sup> Hence, while it seems logical to reduce gun availability in order to diminish firearm suicides, this should not be the sole or main emphasis in suicide prevention. Attention should be directed toward lowering the overall rate of suicide.

In Cape Town firearms are the suicide method of choice and this study highlighted the depressed, alcohol dependent and elderly people who were seriously ill or disabled as being at particularly high risk of firearm suicide. Some of the suicide victims in this sample used their own licensed guns whilst some employed firearms that belonged to others, usually those with whom they were living.

At this time, the kind of legislative provisions that had proven most effective in the USA were already in place in South Africa: our Arms and Ammunition Act prohibited gun possession by anyone dependent on alcohol or narcotics or suffering from a mental condition. By 1995 those who had threatened or expressed intention to kill themselves or others had also been excluded from lawful ownership. Nevertheless, a number of victims in this sample committed suicide using their own licensed firearms, even though they should have been declared unfit to possess these weapons. This suggests a laxity in law enforcement and a need to improve the rigour of background checks on gun licence applicants. Requiring people to renew their gun licences regularly and conducting up-to-date background checks for this purpose could bring to light critical changes in the mental health of gun owners.

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54 Plus eight intimate homicides involving shooters who did not commit suicide.

55 All of the family murders involved only white shooters and victims, while 86% of the intimate murder-suicides involved white shooters and victims.

56 See Chapter Two.

57 Similar to jumping from a substantial height.

More specifically, routine retesting might also reduce the likelihood of suicide among the high-risk group of people over 59, for some older gun owners may choose to give up their firearms when confronted with the hassle of regular testing. Furthermore, advanced age is often accompanied by a deterioration in physical and mental prowess which may also diminish the chances of this group passing competency tests. The introduction of such testing indirectly introduces a cooling-off-period which may avert some impulsive suicides by increasing the time it takes to obtain a gun licence. Outlawing the lending of licensed guns could also deter suicidal persons from gaining quick access to firearms. For the same reason the temporary unlicensed possession of guns should only be permitted under qualified supervision during training.

It is worrying to note that most victims who suffered from depression and alcohol dependency in this sample managed to kill themselves despite others being aware that they were at high risk.<sup>58</sup> Frequently friends and family, rather than professionals, are best-placed to avert suicides. Suicidal intent is often transient and people usually attempt to kill themselves when they are at their lowest ebb. Timeous delays that enable subsequent therapeutic intervention can prevent many suicides. Therefore, public education on suicide and the risks associated with guns should be afforded some priority in suicide prevention programmes. Mental health workers should also be trained to routinely caution people close to high-risk clients to remove firearms from their immediate environment, and to advise that the police can be called upon to confiscate guns if necessary.<sup>59</sup>

The greater stringency that is currently required of licensees in safe-keeping their firearms may have lessened illegal access to licensed guns. Considering that the bulk of children and adolescents who commit suicide with firearms acquire these weapons in their homes, the following additional precautions would seem appropriate: when stored, privately owned guns should be unloaded and secured with child-proof trigger locks or safety catches, and ammunition should be kept separately from firearms. It has been emphasised, however, that it is safest *not* to have a gun in the home because, even when locked away, firearms significantly increase the risk of suicide, especially for adolescents (Brent *et al*, 1991). Of course a more heavy-handed approach would be to prohibit privately owned guns from being kept in homes.<sup>60</sup> This would seem inadvisable in contemporary South Africa considering the widespread insecurity and perceived need for self protection which would probably lower compliance and render such a prohibition ineffective.

The police were identified as one of the groups prone to suicide in this study. In other countries an elevated suicide risk among police has been attributed to the

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58 That is, 32% were receiving mental health treatment at the time and 21% had recently threatened or attempted suicide.

59 Section 11 of The Arms and Ammunition Act 75 of 1969 as amended.

60 Requiring storage at secure venues like gun clubs.

accessibility of guns and high level of stress routinely associated with this profession (Geller & Scott, 1992). This is certainly a plausible explanation in relation to the SAP who were centrally involved in the civil war in South Africa from 1984 onwards. During this conflict the frequency of suicides increased among police countrywide and in 1992 there was a massive 33% hike in the national total (The Commissioner of the SAP, 1993). Similarly, by 1994 the suicide rate had risen to twice the homicide rate among police in the Western Cape (The Commanding Officer W. Cape, 1995). Such trends appear to have galvanised police leadership into action and a range of interventions has since been implemented. Today the associated problems of stress and suicide are being addressed within the police force and preventative measures have been boosted. For instance, in-house counselling and psychotherapeutic services have been developed, a policy of routine referral for counselling following violent interactions, and training for supervisors in the identification and management of officers with stress-related symptoms have been introduced. Research is also being undertaken to develop additional techniques for the reduction of police suicides. However, one of the main ways of reducing stress among police officers appears to have been overlooked. It is vital that officers have time when they are completely free from the pressures of police-work. Yet traditionally the SAP have been obliged to intervene in suspected lawbreaking even when off duty; a policy that must be changed (Bruce, 27 July 1997). Prohibiting officers from being armed with service firearms when off duty may also reduce the incidence of suicides in this group.<sup>61</sup>

Firearm suicides have remained problematic in contemporary Cape Town; in fact the rate is reported to have increased since 1991 (The MRC, 1995). The profile of high-risk suicide victims has also changed in some respects. Although males, whites and police officers were still the key groups at risk of gun suicides in this area in 1994, 26 to 45 year olds were no longer a high-risk group; instead it was coloureds and younger people aged between 15 and 34 (The MRC, 1995; The Commanding Officer W.Cape, 1995). Since the election, black people have acquired greater legal access to firearms and private gun ownership has skyrocketed, particularly among Africans and PSOs in this country. Changes in the groups prone to gun suicide are thus expected in the near future and continued monitoring will be crucial in order to keep abreast of developments.

## INTENTIONAL FIREARM HOMICIDES

### Prevalence

Guns are the *second* most common weapon used to perpetrate homicides in Cape Town. Stabbings have long been the leading cause of homicides and this was still

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61 This has been the policy for Municipal Police for some time, see Wynberg Inquest (1081/90-1).

the case in 1994 when sharp injuries accounted for 52% and shootings 26% of homicidal deaths (The MRC, 1995). Nevertheless, intentional homicidal shootings were responsible for the vast majority of *gun* deaths in Cape Town between 1984 and 1991. One per cent of firearm fatalities were unintentional, 20% were suicides and a massive 79% resulted from intentional homicides. On average there were nearly five times more gun homicides than suicides and ninety times more firearm homicides than accidents: rates of nine, two and 0.1 per 100000 p.a. resp. Before the civil war, suicides and homicides accounted for similar proportions of gun deaths, but from 1985 onwards homicides became the leading cause of firearm fatalities in this city. The incidence of gun homicides grew significantly and by 1994 homicides were responsible for almost 25% more gun deaths than in 1984.<sup>62</sup> The annual rate of firearm homicides rose from five per 100000 in 1984, to 15 in 1991, and reached 20 in 1994.<sup>63</sup> The prevalence of firearm homicide appears to have been temporally associated with the vicissitudes of political conflict in the area. The rate doubled during the first year of intense struggle and then dropped over the next three years when State repression was most zealous. In 1989 the rate began to climb and by 1991 it had surpassed the peak reached in 1985. The latest figures for 1994 indicate that this upward trend has continued (The MRC, 1995).

In most key respects, the pattern of gun homicides has been similar in Cape Town and South Africa since the mid-eighties. Although sharp instruments have been the most common weapons in homicides,<sup>64</sup> firearms have played an increasing role in homicide since the mid-eighties and there has been an upward trend in the rate of gun homicides,<sup>65</sup> with a high in the early nineties.<sup>66</sup> The role of homicides as a cause of firearm fatalities has also grown markedly in South Africa since 1983.<sup>67</sup> However, intentional homicides have played a greater role in gun death locally than nationally, accounting for 18% more firearm fatalities in Cape Town.<sup>68</sup> The average annual mortality rate for gun homicides in this city was almost twice the national rate.<sup>69</sup> Interestingly, however, the growth-gradient was similar in both these jurisdictions, with a threefold increase in the rate of gun homicide: from five to 15 per 100000 p.a. locally and from three to 10 nationally.<sup>70</sup>

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62 See Table 3.6.

63 See Table 7.5 and The MRC (1995).

64 See The CSS (1992[i]3 to 1983[i]).

65 The proportion rose from six per cent in 1983 to 35% in 1992. See Tables 3.2 and 3.1. resp.

66 That is, in 1991 and 1992 in the RSA and in 1990 and 1991 in Cape Town. See Tables 3.1 and 7.5 resp.

67 From 52% in 1983 to 87% in 1992. See Table 3.3.

68 See Table 3.6 and The CSS (1991[i] to 1984[i]).

69 That is, nine and five per 100000 p.a. See Tables 3.7 and 7.5.

70 See Tables 3.1 and 7.5.



**Table 9.1: Percentages of Gun Deaths by Causes in the USA, RSA and Cape Town, Mid-Eighties.<sup>71</sup>**

Causes	USA (%)	RSA (%)	Cape Town (%)
Homicides	43	53	76
Suicides	55	38	23
Accidents	2	9	1

*Sources:* Calculated from Turner and Leyens (1992), The CSS (1987-1983) and Table 3.3.

Firearm mortality in South Africa has differed from that in the USA. While homicide was the leading cause of gun death in South Africa (and Cape Town) in the mid-eighties, in the USA it was suicide. Contemporary South Africa still appears to be more violent than the USA: in 1993 the national homicide rate was six times higher and in 1994 the Cape Town rate was seven times higher (The Argus, 7 August 1993).<sup>72</sup>

### **Characteristics**

The following groups were significantly over-represented as perpetrators of firearm homicides in Cape Town between 1984 and 1991: males, whites and Africans, police officers, PSOs, and adults aged between 22 and 36. But it was African and white, gainfully employed,<sup>73</sup> adult males who were particularly prone to perpetrating gun homicides. A distinct majority (55%) of these shooters were law enforcement officers.<sup>74</sup> Although PSOs outnumbered police officers by two to one in the background population, in these firearm homicides the SAP predominated with 17 police officers to every PSO.

Between the mid-eighties and the early nineties in Cape Town, homicide was the leading cause of gun deaths for: both sexes, civilians, police officers and PSOs, all age-categories and race-groups with the exception of those aged over 59 and whites, for whom suicide was dominant. Homicide victims were generally killed by single bullet-wounds to the front of the body, usually the chest or head. Most (57%) of these victims had no alcohol in their bloodstreams when shot, but the high level of

71 In 1986 in the USA and the annual averages between 1983 and 1987 for the RSA and Cape Town.

72 See Table 3.7.

73 The credibility of this otherwise questionable finding was enhanced by the fact that three other groups with high employment rates -- males, whites and police officers -- were also over-represented.

74 With 53% police, two per cent PSOs, one per cent members of the defence forces and 43% civilians.

missing data makes this finding extremely tentative. The following specific groups were at heightened risk of gun homicide: males, police officers and PSOs, Africans, those who were gainfully employed and adults, especially those aged between 20 and 31 and teenage African boys. The local profile of gun homicide victims corresponded with the national profile of homicide victims in the following respects: males, Africans and those aged between 20 and 31 were over-represented as victims in both jurisdictions.<sup>75</sup>

Although the majority of the homicide victims were civilians, police officers and PSOs were significantly over-represented considering their numbers in the background population. Intentional homicide was the leading cause of gun death in all three groups but it was highest among PSOs (88%) and lowest among police (61%).<sup>76</sup> Significantly more (55%) police officers than civilians or PSOs, were killed in African residential areas. Statistically equivalent numbers of PSOs and police officers were killed while on and off duty. Adults, males and Africans were over-represented as homicide victims, but the highest proportion of youths (14%) and females (10%) were civilians. Adults, males and Africans were over-represented as shooters in homicides involving PSOs, police and civilian victims, but whites were also over-represented among shooters who killed civilian victims. Although police officers were typically killed by civilians, 26% of police who died in gun homicides were shot by fellow officers. This constituted an over-representation considering the number of police in the background population. In addition, 17% of PSO and 55% of civilian victims were fatally shot by police. The Courts found the majority of homicides in which PSOs (50%) and police (61%) were killed to be unlawful shootings, as compared to only 33% of the shootings involving civilian victims. The highest proportion (42%) of these homicides were found to be justifiable, whereas only 15% of police and eight per cent of PSO homicidal gun deaths were deemed lawful.<sup>77</sup>

The majority (77%) of shooters who perpetrated homicides were in legal possession of their firearms, although this finding is tentative because there was a high level of missing data. Handguns were the typical (73%) firearms employed in homicidal shootings, particularly 9mm semi-automatic pistols. The use of fully-automatic firearms was rare (2%) but assault rifles predominated in this category. Twelve-gauge shotguns were the most common type of long-gun used.<sup>78</sup>

In comparison to shooters, the majority (60%) of homicide victims were unarmed. Knives were the preferred weapons and the minority of victims who had guns were armed with handguns, particularly 9mm semi-automatic pistols. Fully-

75 See Tables 3.4 and The CSS (1991[i] to 1983[i]) resp.

76 The figure for civilians was 80%.

77 Also the level of undetermined PSO cases was particularly high at 42%.

78 The preponderance of semi-automatic pistols and shotguns among police was expected as these were standard issue during this period.

automatic firearms were extremely uncommon; only one victim was thus armed and this was because he was a soldier. Interestingly, homicide victims did not appear to favour licensed or unlicensed guns.

The bulk of homicidal shootings were perpetrated out-of-doors, in African and coloured residential areas, by single shooters who did *not* know their victims. Considering the political conflict that took place over this period, it is noteworthy that most (69%) of the homicidal shootings were *not* politically motivated; the most frequent motives given by perpetrators being self defence (40%), arrest (24%) and unlawful reasons (15%).

### **Restraint in the Use of Deadly Force**

The majority (76%) of shooters who perpetrated homicides in Cape Town between 1984 and 1991 failed to use the minimum force viable: on average only 24% employed such restraints.<sup>79</sup> The repertoire of alternate means was also rather limited: in 1224 intentional homicides only 17 kinds of restraint were used.<sup>80</sup> Making victims aware that shooters were police officers was the most common (68%) restraint and the only one widely employed by shooters. It was feasible in almost all circumstances and generally required no *active* effort by police shooters, most of whom were uniformed and in marked police vehicles.<sup>81</sup> The restraint most frequently used by both police and civilian shooters was limiting fire to a single potentially fatal shot. Even though this finding was not particularly high, it indicates that the majority (56%) of shooters fired more potentially lethal shots than was absolutely necessary. The use of police-dogs was the *least* common (one per cent) alternate means and the other four basic types of restraint fell between these two extremes: giving chase on foot (20%),<sup>82</sup> warning shots (19%), oral warnings (18%) and aiming at victims' legs (14%). It is worrying to note that very few shooters used tactics with a demonstrated potential to reduce the probability of deadly force, e.g. taking cover and verbal persuasion (Fridell & Binder 1992).<sup>83</sup> Overall, these restraints were feasible in the vast majority of cases,<sup>84</sup> with aiming at the legs least often feasible and informing of the intention to arrest most often feasible.

The proportionality measures showed that the majority (77%) of shooters who perpetrated homicides in Cape Town between 1984 and 1991 did not uphold the principle of proportionality. Indeed, 79% of shooters violated the defence-of-life standard by using deadly force against people who did not pose an immediate threat

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79 Excluding identification as police.

80 See Table 7.13.

81 Only officers in plain clothes or unmarked vehicles would have needed to inform their victims that they were police.

82 Giving chase, either on foot or in a vehicle, was the leading restraint (60%) in the miscellaneous category of 'other less-than-lethal means'.

83 Two and one per cent resp.

84 On average 96%.

to life. Two-thirds (67%) violated the protection-of-life standard by employing deadly force against people who were neither an immediate threat nor a likely future threat to life. Notably, only a minority (14%) used deadly force in the protection-of-life *without* foreseeably endangering others.<sup>85</sup> Overall, depending on the stringency of the standard used, between 67% and 86% of these shooters failed to employ proportional force although this was feasible under the circumstances.

Several other variables were examined to provide further insight into specific factors affecting shooters' judgements of the danger posed by victims and it was found that more shooters tended to fire at victims who: were not equivalently armed (87%);<sup>86</sup> were *unarmed* (60%); had not threatened anyone (58%); or were *not* suspected of violent crimes (66%). On the side of proportionality, however, fewer shooters than expected shot youths (15%) or victims who were fleeing (32%).<sup>87</sup>

Age has been viewed by some as a factor that ought to be considered in decisions to use deadly force. It has even been contended that, in principle, deadly force should *not* be used against adolescents and children (e.g. The CIIR, 1987). This approach accords with the legal premise, common in many systems of criminal law, that people with limited judgement should be treated as less criminally responsible; this has generally been applied to people under 18, the mentally ill and the intellectually handicapped (Snyman, 1993).<sup>88</sup> It is in keeping with this assumption to require a higher level of restraint in the use of deadly force against youths, even when they constitute a significant threat to others. However, there has been a strong counter-argument that age per se should not be a relevant factor, as the use of deadly force must be justifiable against *anyone* who threatens the life of another (e.g. Geller & Scott, 1992; The Commissioner of the SAP, 1986). At the time of the South African civil war, the use of deadly force against the young was a particularly contentious issue given the central involvement of black youths in the political conflict. Not surprisingly, Anti-Apartheid supporters condemned the use of deadly force against adolescents and children, while supporters of the Apartheid State, including the SAP, endorsed this practice. Interestingly, this study of Cape Town between 1984 and 1991 showed that the majority (85%) of shooters did *not* kill children or adolescents; in fact this age-group was under-represented among homicide victims.

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85 Overall, 65% of shooters foreseeably endangered bystanders by firing at their victims.

86 They were either unarmed or armed with weapons less deadly than firearms or explosives. See Table 7.14.

87 Only 26% of victims were shot in the back.

88 All three of these groups have been treated thus in South Africa and children under seven have been deemed devoid of criminal responsibility.

### Legal Process

The vast majority (83%) of these homicidal shootings never went further than inquest courts. Informal inquests were by far the most common kind of legal proceeding (72%), with only one formal inquest in every seven.<sup>89</sup> Most of the criminal trials were heard in the Supreme Court (68%) rather than in the lower Regional Magistrates' Courts (32%). Overall the Courts found the highest proportion of homicides to be lawful (40%), with arrests (37%) and self defence cases (42%) predominating. The incidence of the other six types of justifiable homicide were low: accidents and shootings in the interests of public safety were the most common (three per cent resp.), while necessity cases were least common (0.3%).<sup>90</sup> The grounds of justification were employed with varying rates of success: the highest being for necessity, obedience to orders, public safety and crowd dispersal (100%), followed by arrest (91%), defence of property (83%), self defence (68%) and least successful of all, accidents (32%).

Only 34% of the homicidal shootings were deemed to be unlawful, the bulk of which were classified as unspecified criminal homicides, although more cases were found to be murders (22%) rather than culpable homicides (10%). Notably, the Courts did not decide the lawfulness of over a quarter of these homicides. The vast majority (80%) of the shooters were *not* criminally charged but when they were, it was generally with murder; the most serious offence. This was common prosecutorial practice in South Africa; it enabled leeway for plea bargaining and convictions for lesser offences like culpable homicide. Those shooters who were charged were also generally tried (86%) and convicted of a criminal offence (68%);<sup>91</sup> two out of every three convictions were for murder.<sup>92</sup> Most (60%) of the convicts were sentenced to periods of imprisonment, the average being 11 years. Only 14% were sentenced to death, the same percentage as received suspended sentences.<sup>93</sup> Sentencing alternatives like community service and financial compensation were relatively uncommon in these cases. In all, only nine per cent of those who committed homicidal shootings were held criminally liable for killing. Some of the shooters were not charged, some shootings were found justifiable and some shooters died shortly after these incidents. Nevertheless, more than half (57%) of the shooters involved in the *criminal* homicides were never brought to justice.

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89 Or 86% informal and 14% formal.

90 See Table 7.21.

91 Most (97%) were also legally-represented, usually by pro-deo defence counsel (70%), which was expected because murder was a capital offence.

92 See Table 7.23.

93 See Table 7.24.

## JUSTIFIABLE AND CRIMINAL HOMICIDES

### Prevalence

Of the three categories of homicide, the average annual rate was highest for justifiable homicides, at four per 100000 p.a, and this was followed by criminal homicides at three and undetermined homicides at two.<sup>94</sup> Justifiable homicides reached a significant high in 1985 at the start of the civil war: the annual rate tripled from two per 100000 in 1984 to six in 1985. However, the average rate dropped from four to three deaths per 100000 p.a. between the mid and late eighties. Statistically-speaking, criminal homicides were relatively evenly distributed although the average rate did increase from two to three per 100000 p.a. over this period. Undetermined homicides remained constant, averaging around two per 100000 p.a. and then reached a statistical high of four in 1991.

### Characteristics

Whites and police officers were significantly over-represented as shooters in justifiable homicides, whereas in criminal homicides Africans and civilians were over-represented as shooters. Adults, males and the gainfully employed were over-represented in all of the homicidal shootings irrespective of their lawfulness. Nevertheless, it was those aged between 21 and 33 who were most likely to perpetrate criminal homicides, and those aged between 23 and 37 who were more prone to committing justifiable homicides.

Africans, males and adults were over-represented as victims in all the homicidal shootings and gainfully employed people were over-represented in criminal and undetermined homicides. However, those aged between 19 and 28 were at greatest risk of being killed in justifiable homicides, whereas the slightly older age-group 20 to 33 were at particular risk of criminal homicides.

Handguns were the most common firearms among shooters in all homicides, although long-guns were over-represented in justifiable homicides. Licensed guns were more common in justifiable homicides, and unlicensed guns in criminal homicides. Fully automatic firearms were rarely used in homicides by either shooters or victims.<sup>95</sup> The majority of the homicide victims were unarmed but fewer victims were armed in justifiable homicides than in criminal homicides.<sup>96</sup>

More justifiable homicides occurred out-of-doors whilst more criminal homicides were perpetrated in victims' work-places.<sup>97</sup> More of the undetermined homicides took place in African residential areas and were politically motivated shootings. More of the homicide cases that went to criminal trial were deemed to be

94 See Table 8.3.1.

95 Eleven shooters and one victim in justifiable homicides, five shooters in criminal and two in undetermined homicides.

96 In all homicides weapons other than guns predominated.

97 Which reflects the high incidence of robberies and burglaries of business premises.

unlawful and fewer to be lawful.

### Restraint

Whilst informative, findings that pertain to all of the homicidal shootings combined obscure trends particular to different kinds of shootings. For instance, it could be argued that the low level of restraint reported thus far was produced by the fact that criminal homicides constituted over a third of this sample. It is improbable that shooters who used their guns to commit offences employed these weapons with proper restraint. By contrast, high levels of restraint were expected in justifiable homicides because minimum force and proportionality were legally required in most of these cases. Indeed, to a large extent this is what justified such killings. The levels of minimum force varied across lawful, unlawful and undetermined homicides in a way that supported the abovementioned hypothesis. Shooters employed a higher average level of minimum force in justifiable homicides (31%) and lower average levels in criminal (20%) and undetermined homicides (22%). However, even the best of these levels was poor; minimum force was *not* used in over two thirds of the justifiable homicides.

Identification was the leading restraint (71%) employed by police shooters in lawful homicides, but firing only one potentially fatal shot was the most common (46%) among civilian and police shooters. Whilst informing of the intention to arrest was the *least* frequently employed (13%) basic restraint.<sup>98</sup> Firing a single potentially fatal shot was also the most frequent restraint in criminal (42%) and undetermined (52%) homicides, whereas aiming at victims' legs was least common (eight per cent) in criminal homicides and informing of the intention to arrest occurred least (0) in undetermined homicides. However, there were very few substantial differences in the extent to which each of the minimum force restraints was applied in lawful, unlawful and undetermined homicides. Oral warnings and giving chase were the exception; both of these means were employed more frequently in justifiable homicides and less frequently in unlawful homicides.

The levels of proportionality also varied across lawful, unlawful and undetermined homicides according to the hypothesised pattern. Shooters employed a higher average level of proportionality in justifiable homicides (32%) and lower average levels in criminal (8%) and undetermined homicides (20%). Even those who perpetrated lawful homicides displayed a marked lack of proportionality in their use of firearms; violations occurred in over two-thirds of these cases. Most shooters fell short of both the defence and protection-of-life standards and foreseeably endangered third parties. In three-quarters of the lawful homicides the defence-of-life standard was infringed.<sup>99</sup> The protection-of-life standard was breached in half of

98 Levels for the other basic restraints were: oral warnings (27%), warning shots (26%) and aiming at victims' legs (18%).

99 Undetermined (85%) and criminal (94%).

the justifiable homicides,<sup>100</sup> and only 21% of the shooters used deadly force to protect life *without* foreseeably endangering others.<sup>101</sup> Notably, justifiable homicides were characterised by more victims who were armed, who threatened others, were suspected of violent crimes and fled from their shooters. Nevertheless, a sizeable 36% of the victims were non-dangerous, fleeing suspects. One of the key differences between criminal and justifiable homicides was the threat posed by victims; those killed in lawful shootings generally constituted a greater threat. The following groups were more commonly victims of justifiable homicides, and less commonly victims of criminal homicides: those considered dangerous, those who were armed, violent crime suspects, victims who threatened others and those who endangered lives. The highest level of proportionality exhibited in these three types of shootings was the low incidence of child and adolescent victims.<sup>102</sup>

## **SELF DEFENCE AND ARRESTS**

### **Prevalence**

The bulk (79%) of the justifiable homicides were cases of self defence (42%) and arrest (37%).<sup>103</sup> Self defence was the most common kind of justifiable homicide and the most frequent type of firearm homicide in general. In Cape Town between 1984 and 1991 there were 21 fatal shootings in self defence and 18 during arrests on average each year. Self defence shootings reached a high in 1985 at the start of the civil war, but the average rate dropped from two per 100000 p.a. in the mid-eighties to one in the late eighties. By contrast, arrests remained relatively constant over this period at an average rate of one per 100000 p.a.<sup>104</sup>

### **Characteristics**

Males, adults, whites, the gainfully employed, PSOs and police officers were over-represented as shooters in self defence shootings and arrests, and people aged between 24 and 37 were most likely to perpetrate these shootings. Males, adults and Africans were over-represented as victims in self defence homicides as well as arrests, and those aged between 20 and 28 years were most prone to being killed in these shootings. The key difference between victims in self defence and arrest shootings was the threat they posed; more of the victims killed in self defence were armed, not fleeing, suspected of violent offences or had threatened someone and were considered dangerous.

Licensed guns were more common among shooters in cases of self defence and arrest. Handguns, particularly 9mm semi-automatic pistols, were more common

100 Undetermined (68%) and criminal (87%).

101 Undetermined (13%) and criminal (5%).

102 That is, 18%, 14% and 12% resp.

103 Including defence of others and preventing escapes resp.

104 See Tables 7.28 and 7.29 resp.



among shooters in arrests. The majority of the victims killed in self defence were armed, most commonly with weapons other than guns, but in arrests the number of armed and unarmed victims was similar.

More of the self defence homicides took place out-of-doors, in coloured and African residential areas and were *not* politically motivated. The three circumstances that most frequently culminated in fatal self defence shootings were: suspects attempting to avoid arrest (22%); robbers killed by their victims in the course of a robbery (18%); and participants shot in police attempts to suppress political protest (17%). In these cases more victims were shot in the front of the body. Similarly, more of the arrests occurred out-of-doors and in African residential areas. The majority of the arrests were *not* politically motivated, instead suspected car theft was the main precipitant. More of these victims were shot in the back of the body. A majority of the self defence and arrest cases were decided at informal inquests.

### Restraint

A lower level of restraint might be expected in self defence cases, as these ostensibly involve crisis situations in which people resort to shooting in order to protect their lives. In this study, however, the average level of minimum force employed in self defence was *not* markedly different from that applied in arrests.<sup>105</sup> This was despite the fact that more of the victims killed in self defence were considered dangerous, were armed, had threatened others, were suspected of violent crimes and were not fleeing. Identification was the leading restraint employed by police shooters (73%) in self defence cases and firing a single potentially fatal shot was most common among civilian and police shooters (36%). Aiming at victims' legs was the *least* frequently employed of the minimum force restraints (12%).<sup>106</sup> By contrast, foot chases were the most common miscellaneous alternative used in arrests (58%), whereas informing of the intention to arrest was least common (12%).

The average level of proportionality was by definition *higher* (44%) in self defence cases than in arrests (15%). Those who killed in self defence upheld the protection-of-life standard and used deadly force to protect life *without* foreseeably endangering others to a greater extent than those who killed in order to arrest. Notably, however, the extent to which victims actually threatened life was not notably different in self defence (25%) and arrests (15%). Also, 78% of those killed in arrests and even 20% of those killed in self defence were unlikely to have been dangerous had they not been shot. Furthermore, most (76%) of the suspects killed during arrests were non-dangerous and shot when fleeing,<sup>107</sup> and 38% of the shooters endangered bystanders in their attempts to arrest non-dangerous suspects. As

105 That is, 27% and 36% resp.

106 The remaining restraints were: other means (34%), warning shots (27%) and oral warnings (25%).

107 Of these victims 96% were black.

expected, the comparative figures with respect to self defence cases were low: only six per cent of the victims were non-dangerous and fleeing and two per cent of the shooters endangered bystanders by firing at non-dangerous suspects.

Another way of examining restraint in the use of deadly force during arrests is to evaluate the necessity of a shooting by taking all relevant factors into account, and not just those that were known to the shooter at the time. According to this approach shootings may be classified as non-elective or elective, the latter defined as those in which the shooter could have refrained from shooting without jeopardising life (Fyfe, 1981[c]). The bulk (79%) of arrests in this study were judged to be elective shootings. Overall, the restraint exhibited in these, the two most common types of justifiable homicides, was not impressive. None of the levels of minimum force or proportionality even surpassed the half way mark (50%).

## **POLITICALLY MOTIVATED AND NON-POLITICAL SHOOTINGS**

### **Prevalence**

The average annual rate of politically motivated firearm homicides was less than half the rate of shootings that were not politically motivated: two and five per 100000 p.a. resp. Politically motivated fatal shootings soared at the start of the civil war, rising from 0.1 in 1984 to five per 100000 in 1985.<sup>108</sup> Thereafter, the average rate remained constant at two per 100000 p.a., whilst the rate of non-political shootings increased slightly from four to five per 100000 p.a.

### **Characteristics**

Police officers, Africans and whites were over-represented as shooters in politically motivated homicides. Those aged between 22 and 35 were most likely to perpetrate non-political shootings, whilst 24 to 37 year olds were more likely to commit politically motivated shootings. As regards victims, those aged between 19 and 30 were most prone to death in politically motivated shootings, whereas those aged between 21 and 31 were most at risk of being killed in non-political shootings.

More of the shooters who perpetrated politically motivated shootings used licensed firearms, the most popular being long-guns, particularly 12-gauge shotguns. By comparison unlicensed firearms, especially handguns, were more common in non-political homicides. Victims' weapons were similar in politically motivated and non-political gun homicides.

More politically motivated shootings were perpetrated out-of-doors, in African residential areas, and by at least two shooters who did not know their victims. Notably, a higher number of these victims died from multiple pellet-wounds. In politically motivated shootings, more of the shooters foreseeably endangered third parties and more of the victims were fleeing when shot. By contrast, more of the

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108 See Table 8.5.1.

non-political homicides were committed indoors, in coloured and white residential areas, by single shooters who were acquainted with their victims, and most victims died from single bullet-wounds. The Courts did not reach findings in more of the politically motivated gun homicides. Also fewer of the politically motivated cases were heard at criminal trials, hence fewer of these shooters were prosecuted.

### **Restraint**

Shooters employed a lower average level of minimum force (16%) in politically motivated homicides and a higher average level (28%) in non-political homicides. In all of the firearm homicides, identification as a police officer was the leading form of restraint, followed by firing a single potentially fatal shot. The least commonly used restraint was informing of the intention to arrest. There were three notable differences in this group of restraints: oral warnings, warning shots and aiming at victims' legs were lower in politically motivated homicides.

The average level of proportionality was statistically similar in politically motivated (28%) and other homicides (21%). The extent to which shooters protected life without foreseeably endangering others and upheld the two key standards was not markedly different in these two kinds of shootings. In politically motivated homicides more shooters foreseeably endangered third parties and more of the victims made life-endangering threats; most commonly attacking as part of a hostile group (81%), whereas in non-political homicides the most frequent kind of life-threat was shooting (34%). Notably, politically motivated homicides involved more victims who were violent crime suspects and victims who were fleeing from their shooters. In both kinds of homicides, the highest level of proportionality was reflected in the fact that the proportion of youthful victims was low. All of the measures considered, shooters who perpetrated politically motivated and non-political homicides demonstrated a similar lack of proportionality in their use of firearms, violating this principle in over 70% of cases.

## **POLICE AND CIVILIAN SHOOTINGS**

### **Prevalence**

Police officers and PSOs were over-represented as shooters in this sample of homicides. The average annual rate of gun homicides by police over this period was slightly higher than the rate for civilians: four as compared to three per 100000 p.a. resp.<sup>109</sup> Fatal shootings by police reached a marked high in the first year of intensive political conflict in Cape Town, rising from two per 100000 in 1984 to eight in 1985. Thereafter, the average rate dropped from five per 100000 p.a. in the mid-eighties to three in the late-eighties. By contrast, the average rate of firearm homicides perpetrated by civilians remained stable over this period, at around three

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<sup>109</sup> See Table 8.4.1.

per 100000 p.a.<sup>110</sup> Unfortunately, national rates of police *gun* homicide were not available for comparison. However, the average national rate of police homicide over this period was two per 100000 p.a. and most of these cases were shootings.<sup>111</sup> It appears therefore, that the rate of firearm homicide by police in Cape Town was higher than the South African rate: four and two per 1000000 p.a. resp. This is in keeping with North American findings of elevated rates of police gun homicide by police in big cities (e.g. Geller & Scott, 1992). Furthermore, the estimated rate of firearm homicides perpetrated by police in the mid-eighties was notably higher in South Africa than in the USA: two and 0.3 per 100000 p.a. resp.<sup>112</sup>

### Characteristics

Whites were over-represented among the police shooters who perpetrated homicides, but the majority of the PSO shooters were coloured. Also most of the law enforcers were on duty at the time of the shootings. Police officers aged between 23 and 34, PSOs between 23 and 33 and civilians between 22 and 39, were most likely to perpetrate firearm homicides.

Coloureds were over-represented among the victims killed by PSOs, whereas Africans were over-represented as victims of civilians and police. People aged between 19 and 28 were most prone to fatal shootings by police, those between 19 and 24 were also at risk from PSOs, and those between 20 and 33 were at heightened risk from civilian shooters.

Long-guns, particularly 12 gauge shotguns, were more common among police shooters, whereas handguns predominated among civilians and PSOs. More of the police and PSO shooters used licensed firearms, but more of the civilian shooters used unlicensed guns. The weapon characteristics of victims who were killed by police, PSOs and civilians were similar.

More of the police shooters perpetrated homicides out-of-doors and in African residential areas, whereas more of the civilians shot their victims indoors, in homes or work-places. Most of the PSO homicides were committed in coloured residential areas. In addition, more of the police shooters carried out politically motivated shootings, and more of the civilian homicides were non-political. More of those who were shot by police died from multiple pellet-wounds to the back, but more of the victims killed by civilian and PSO shooters died from single bullet-wounds to the front of the body.

In cases of self defence, more civilian shooters killed robbers, whilst more police killed political protesters whom they believed were a threat. It is also

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110 Temporal trends in PSO shootings were not analysed due to the small number (4) of cases each year.

111 See Table 5.4.

112 Based on the annual estimate of 600 fatal police shootings for the USA, see Geller (1986).

noteworthy that 11% of police shooters who killed in self defence were protecting themselves against politically motivated attacks. For PSOs the top precipitating circumstance for self defence shootings was confrontation with suspects who resisted arrest.

More (89%) of the arrests were perpetrated by police shooters than by PSOs (2%) or civilians (9%).<sup>113</sup> Qualitative analysis revealed that most (62%) of the police arrests began when officers on routine patrol spontaneously intervened after observing suspected lawbreaking. Research has shown such situations to be more risky for police, as officers lack vital preparatory information that is generally available when they are dispatched (Fridell & Binder, 1992). In this sample, citizens' arrests were generally triggered by a civilian becoming aware that someone was attempting to steal his/her property. Suspected car theft was the leading motivation for both police (30%) and civilian (28%) arrests.

### **Restraint**

The average level of minimum force employed by police (30%) was *not* substantially different from that which characterised civilian shooters (23%) and PSOs (30%). Identification was the top restraint among police (68%), followed by foot chases (29%). Among PSOs, warning shots (46%) and firing only one potentially fatal shot (40%) were the two leading restraints. By contrast, firing a single fatal shot was the number one form of restraint (48%) among civilian shooters, with warning shots in second position (19%). Informing of the intention to arrest was the basic restraint least commonly used by all of the shooters. There were no substantial differences among police, PSO and civilian shooters in the use of minimum force restraints.

The average level of proportionality on the part of police (25%) was not substantially better than that exhibited by PSO (34%) and civilian shooters (24%). However, civilian performance was notably poorer (11%) than police (27%) and PSO (25%) shooters in relation to the defence-of-life standard.<sup>114</sup> But, civilian (47%) and PSO (64%) shooters performed much better than police shooters (30%) in upholding the protection-of-life standard. Interestingly, there were no major differences among these three shooter-groups in the extent to which they managed to protect life without foreseeably endangering others. In fact it was common practice for all of these shooters to foreseeably endanger third parties when shooting. Notably, there were a number of important differences in the extent to which police, PSO and civilian shooters implemented certain aspects of proportionality: police and PSOs killed more victims who threatened others and victims suspected of violent

<sup>113</sup> Figures have been included here because these were additional results.

<sup>114</sup> Although most (68%) of the victims' threats did not endanger lives, police experienced a higher level of life threats than civilians. The three most common for civilians and police shooters were: attack by a hostile group, being shot at and being stabbed.

crimes, whereas civilians shot fewer victims who were fleeing.

All of the measures considered, police, PSO and civilian shooters displayed a lack of proportionality in their use of firearms, violating this principle in at least two-thirds of the homicides. The majority of these shooters failed to uphold the defence-of-life standard and foreseeably endangered third parties in attempts to protect life. It was only PSO shooters who performed according to the protection-of-life standard in the majority of cases. The highest level of proportionality exhibited by police, PSO and civilian shooters was the low incidence of child and adolescent victims.

### **Legal Process**

More of the homicides committed by police and PSOs went no further than inquest, whilst more of those perpetrated by civilians were heard as criminal trials. In other words, fewer police and PSO shooters were prosecuted than civilians. The Courts found more of the homicides involving police shooters to be lawful arrests and more of those involving PSOs to be lawful cases of self defence.

## **KEY PROBLEMATIC ASPECTS**

### **High Premature Mortality**

Because the bulk of these gunshot victims were young adults in their economically productive years (20 to 31), these firearm fatalities constituted a considerable loss of potential years of life and an unacceptably high level of premature mortality. In addition, it was African people, an historically oppressed group, who were over-represented as victims in these shootings. Such disparities in mortality are surely manifestations of "the deleterious effects of poverty and institutionalised social deprivation" (The MRC, 1995:1). This is a public health issue that calls for urgent attention in a nation publicly committed to redressing the damage caused by Apartheid.

### **Justifiable Homicides**

Considering that the major concern in South Africa has been focused on illegal possession and the criminal use of firearms, it was noteworthy to find that the lawful use of licensed guns, mainly by police officers, constituted a core aspect of the problem in relation to intentional firearm homicides in Cape Town between the mid-eighties and early nineties. The majority (77%) of the intentional homicides were perpetrated with licensed firearms. Lawful shootings were the most common kind (40%) of intentional homicide, although by the late-eighties the average rates of justifiable and criminal homicide had become equivalent.<sup>115</sup> The SAP were

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<sup>115</sup> That is, three per 100000 p.a. See Table 8.3.1.

responsible for the bulk (54%) of the homicidal shootings,<sup>116</sup> including the leading two categories of justifiable homicides: arrests (89%) and self defence cases (66%).

It is reasonable to expect police officers and PSOs to demonstrate greater restraint than civilians in the use of guns, considering that law enforcers are given specialised training and have a professional duty to protect the public. However, the premise was contradicted in this study: neither police nor PSO shooters were found to have exercised substantially more restraint than civilians and they performed as poorly in upholding the principles of proportionality and minimum force. Notably, the restraint that required the least active effort -- police identification -- was the only one that was employed by a majority of shooters in any of the three groups. Although the range of restraints used by police shooters was wider than civilians,<sup>117</sup> it was still extremely limited considering the rich variety of less-than-lethal control tactics that have been devised for law enforcement purposes.<sup>118</sup> In particular, there was little evidence of the use of unarmed control tactics and strategies involving less-than-lethal equipment (Cledé & Parsons, 1987). The only less-than-lethal weapons used in these justifiable homicides were teargas and non-live ammunition fired from 12-gauge shotguns. While the use of teargas was relatively uncommon in the sample cases, the police made frequent use of shotguns loaded with pellets in the management of political protest over this period in Cape Town. Indeed, this weapon was used in more of the politically motivated police shootings and more of these victims died from multiple pellet-wounds. Since the incidents resulted in fatalities, this usage of non-live ammunition can hardly be classed as a less-than-lethal tactic. Instead, it reflects the lethal use of weapons intended for non-lethal use, which researchers have shown was common practice among the SAP during the civil war (e.g. Haysom, 1987[a]; Duflou, 1986).<sup>119</sup>

As expected, the greatest restraint was exercised in lawful firearm homicides. But even this, the 'best performance', was unacceptable: on average minimum and proportional force were employed in only one out of every three lawful shootings. Five basic restraints were examined: restricting fire to one potentially fatal shot (46%), issuing an oral warning (27%), firing a warning shot (26%), aiming at the legs (18%) and informing of the intention to arrest (13%). Four of the five were found to have been applied in less than a third of these justifiable homicides. Usage levels were generally even lower for the tactics grouped together in the miscellaneous category of 'other less-than-lethal means': foot chases (16%), abbreviated oral warnings (7%), car chases (4%), physical struggle (3%), taking cover (3%), firing teargas (0.2%), fleeing (0.1%), communication (0.1%) and

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116 And the bulk (76%) of the justifiable homicides.

117 Police (15), civilians (8) and PSOs (7).

118 Like those proposed by Cledé and Parsons (1987) and Graves and Connor (1991). See Chapter Four.

119 See Chapter Five.

vehicle-ramming (0.1%). In particular, shooters made very little use of tactics effective for diffusing violence, such as communication and strategic positioning (Fridell & Binder, 1992).

The extent to which shooters employed minimum force in self defence and in arrests was similarly poor. This was unexpected as the law required greater restraint for the defence of effecting an arrest than for self defence. Although the average level of proportionality was predictably higher in self defence shootings than arrests, it was still below 50%. In practice, the line between arrest and self defence shootings was not as clear as it was in law. Efforts to effect arrests were the circumstances that most frequently escalated into self defence shootings. It was disturbing to find that the shooters in these situations often *created* the need to use deadly force by failing to adopt protected positions and unnecessarily placing themselves in danger. In particular, the use of strategic protected positioning was extremely poor. In sum then, firearms were used too readily and with a marked lack of restraint which lay at the core of the gun homicide problem alongside a conspicuous breakdown in proportionality.

The right to life is a fundamental human right. In these cases human lives, especially those of crime suspects, were not accorded sufficient value. In most of these lawful shootings firearms were not used to defend life: three quarters of those who were killed did not pose an immediate threat to life, and half of the victims constituted neither an immediate nor a future threat to life. Overall 36% of the victims of lawful shootings were killed despite the fact that they were fleeing and not dangerous. Even some (6%) of the victims who were killed in self defence were non-dangerous and shot while fleeing. But it was arrests that were particularly problematic with respect to proportionality. In four out of every five arrests the victims were unlikely to have been dangerous had they not been killed, and the shooters could have refrained from shooting without jeopardising the lives of others. The majority (76%) of those killed in arrests were non-dangerous and fleeing suspects. Tragically, the leading motivation for these fatal arrests was suspected car theft. Proportionality was also seriously undermined by the fact that many shooters foreseeably endangered bystanders when perpetrating lawful shootings. Worse still, a substantial proportion (38%) of the shooters endangered the lives of innocent people while trying to arrest suspects who were not even dangerous. Firing at suspects in moving vehicles is a police tactic that seriously endangers other road users as well as third parties in the vehicles concerned. For this reason the practice has been repudiated among North American police in recent years (Alpert & Fridell, 1992). Nonetheless, in 16% of these arrests the SAP fired at moving vehicles and killed the drivers (38%) and/or the passengers (62%).

It has long been alleged that there is systematic racial discrimination in the



application of deadly force by the North American police.<sup>120</sup> Although racist practice was highly likely among the South African Police,<sup>121</sup> this study of fatal shootings in Cape Town was *not* designed to test the police racism hypothesis adequately. However, the findings certainly do not contradict the premise of police racism in the use of deadly force by the SAP in Cape Town between 1984 and 1991. Black people were shown to be over-represented as victims in fatal arrests by white police officers (75%), white PSOs (67%) and white civilians (83%). These fatal arrests typically involved a white person shooting at a black suspect,<sup>122</sup> and 96% of the non-dangerous fleeing suspects who were killed during arrests were black.<sup>123</sup> Remarkably, only *one* of the 142 arrest victims was white and he was shot by a white officer. It was also interesting to note that fatal shootings by black officers were largely intraracial: coloured officers tended to kill mainly (91%) coloured suspects and African officers mainly (86%) African suspects. By contrast, justifiable homicides by white officers were generally inter-racial: the bulk (99%) of those killed by white officers were black suspects. This pattern may well be the product of Apartheid-based assignment practices within the SAP and the fact that coloured and African residential areas were intensively policed during the civil war.

What this study showed clearly was that black suspects were more likely than white, to be lawfully killed by the police.<sup>124</sup> This might have been the result of police racism, alternatively it might have been because black suspects were more often dangerous.<sup>125</sup> Unfortunately, resolving this dilemma requires a matched sample of white and black suspects and these data included only one white suspect. Nevertheless, there was one particular finding that pointed definitively in the direction of police racism: white police officers killed a much higher proportion (57%) of black suspects who were *not* dangerous, than black officers (30%).<sup>126</sup>

Perhaps the most distressing finding was that the Courts deemed such paltry levels of restraint sufficient to legally justify these shootings. Here the problem lay in the practice of the inquest courts which adjudicated the vast majority of these intentional homicides, mainly in the form of informal proceedings. It is clear that these inquest courts did not stringently apply the legal requirements stipulated in law at this time. Overall there was a low level of compliance with key legal prerequisites in cases that were condoned as lawful shootings in self defence: on

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120 See Chapter Four.

121 See Chapter Five.

122 In Cape Town over this period, however, coloureds and Africans were over-represented in arrests, whereas whites were over-represented in the SAP and among civilian gun owners (Hansard, 27 May 1992).

123 Africans (59%) and coloureds (41%).

124 This was also the case in the USA and in South Africa where 96% of those who died due to legal intervention with a firearm were black (The CSS, 1983[i] to 1989[ii]).

125 See Chapter Four.

126 White police were responsible for killing 81% of the non-dangerous black suspects.

average 73% of these shooters failed to employ minimum force and 56% violated proportionality. Furthermore, in order to successfully employ self defence as a justification for killing, the law required an immediate threat to life. This was not the case in 75% of the shootings which were, nevertheless, ruled to be cases of self defence. Such limited conformation with legal preconditions was also common in shootings that were justified as arrests: 64% of these shooters failed to use minimum force, 54% foreseeably endangered third parties by shooting and 88% did not inform victims of their intention to arrest.<sup>127</sup> Yet these shootings were legally condoned. In spite of the fact that section 49(2) of the Criminal Procedure Act and the case-law mandated a stringent set of restraints for the lawful use of deadly force in arrests, this defence was among the most successful in the sample. The Courts accepted this justification for fatal shootings in 91% of the cases in which it was proffered, even though low levels of restraint had been employed in these incidents. This provides additional support for Hansson's (1990[a]) previous claim of laxity in the application of deadly force controls by the Courts, resulting in a low level of sanction against those who used guns without due restraint.

### **Defensive Civilian Gun Use**

In South Africa there has been a real increase in the rate of lawful gun ownership among civilians, particularly since 1991: in 1986 the rate was 3802 per 100000 people, in 1991 it was 3885 and by 1994 it had reached 4495.<sup>128</sup> The nineties have also seen a marked increase in illegal firearm ownership (The Inter-Departmental Strategy Team, 1996[b]). This upward trend in private possession has been attributed mainly to widespread fear of violence, and more importantly, the lack of public confidence in institutions of collective security. Although the Apartheid State was replaced in 1994, public confidence has been slow in recovering. Crime and violence have continued to rise and in the short term the massive restructuring, especially of the police force, seems to have exacerbated anxieties about personal safety. For the economically-advantaged, home protection now involves acquiring the services of private security companies and target-hardening techniques like high walls, guard dogs, burglar bars, alarms and firearms (Lochrenberg & Stanton, 1995).

In South Africa, like the USA, personal protection is the main motivation for legal private gun ownership (The Inter-Departmental Strategy Team, 1996). It is an established belief that the safety of loved ones and property is enhanced by keeping a gun in the home. However, in recent years the veracity of this premise has been questioned. A number of empirical investigations have shown that the presence of a firearm in the home is associated with a higher risk of domestic homicide and suicide

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127 See Table 5.10.

128 See Table 3.16.

(e.g. Kellerman *et al*, 1993; Brent *et al*, 1991). The study at hand showed that 'family firearms' were seldom employed (8%) to kill intruders and were more frequently used (92%) to kill friends or family. In most instances family-members used guns to commit suicide (83%), but domestic deaths also resulted from accidents (7%), murder-suicides (6%) and disputes (4%).<sup>129</sup> In short, the sense of security afforded by keeping a firearm in the home may be a dangerous myth. However, the data generated by this research did not enable a balanced assessment of the defensive benefit of gun ownership, which requires at very least information regarding lives saved, injuries prevented and property defended.

### **Criminal Homicides and Gun Crime in General**

Although lawful gun homicides were revealed as a key problem in this study, unlawful firearm homicides were also shown to be problematic. Indeed the proportion of criminal (36%) and justifiable (40%) gun homicides was quite similar. Firearms are used to perpetrate many types of offences such as murder, robbery, burglary and rape.<sup>130</sup> Because this was a study of deaths, the sample did not include the full range of gun offences. Most importantly, it excluded crimes in which guns were used to threaten, rather than to kill or injure.

Available crime data were thus consulted to shed further light on this issue.<sup>131</sup> According to conviction statistics (see Table 3.9), robbery was the leading offence perpetrated with guns in South Africa, at least from the mid-eighties. This was followed by murder, attempted murder and pointing a firearm.<sup>132</sup> Similarly, robbery and attempted murder were the top two gun offences reported in the Western Cape, the region that encompasses metropolitan Cape Town.<sup>133</sup> Notably, the conviction statistics show an increase in the role played by firearms in robbery, murder and attempted murder since the mid-eighties.<sup>134</sup> In other words, a higher proportion of robberies, murders and attempted murders are probably being committed with guns. More specifically, handguns appear to have become increasingly popular in murders and attempted murders. Since the late eighties handguns have been used in the majority of murders and attempted murders (70% on average), whereas long-guns have been used in 21% and assault firearms in only nine per cent of such cases.<sup>135</sup>

The findings from this investigation indicate a growth in the rate of unlawful

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129 Less than one per cent (7) were residents killed by burglars.

130 See Table 3.9.

131 Although as previously noted caution must be exercised.

132 Excluding illegal possession because it is not strictly an offence in which a gun is actively *used* to perpetrate a crime.

133 See Table 3.11.

134 See Table 3.8.

135 See Table 3.10. The peak for assault firearms was 1988/9 when these weapons accounted for 21% of the murders/attempted murders for which convictions were secured.

firearm homicides in Cape Town between the mid-eighties and the early nineties.<sup>136</sup> In 1984 the rate of criminal gun homicide was lower than justifiable homicide, but by the early nineties these rates were equivalent. Handguns and unlicensed weapons were found to be the preferred types of firearms in criminal homicides, with little use of combat or fully-automatic firearms.

It is vital not to lose sight of the fact that the line between criminal and justifiable gun homicides is not immutable; it depends on the law and, more importantly, how it is applied in practice. For if the Courts had applied the legal requirements regarding restraint more strictly in the cases in this sample, fewer would have been deemed lawful and more unlawful. Furthermore, because culpable homicide is about negligence or omission rather than commission, it is an ideal type of offence for convicting shooters who kill, yet fail to employ the legally required level of restraint and/or use firearms in inappropriate circumstances. Given the low levels of legally required restraints that were used by the shooters in this study, a higher percentage of culpable homicides was expected. But the Courts did not appear to employ culpable homicide assiduously: only two per cent of the intentional homicides in this sample were ruled to be culpable homicides. This was the smallest category (10%) of criminal homicides. The remainder were classified as murders (22%) and unspecified unlawful homicides (68%).

The unlawful gun homicides in this study were grouped into four basic categories: (1) motivation unknown (35%),<sup>137</sup> (2) killing as *primary* motive (32%),<sup>138</sup> (3) ostensibly lawful motive (23%),<sup>139</sup> and (4) shooting secondary to some other offence (10%), like robbery. Primary homicides were most common and here the intention was to kill or seriously injure, as in the case of political assassinations, 'rumbles' between rival street gangs, drive-by-shootings, murder-suicides and intimate homicides. Secondary homicides were less frequent: only seven per cent of these victims were killed during robberies, two per cent in burglaries and 0.3% during rapes.<sup>140</sup> Such low levels of killing in robberies perpetrated with guns was probably because these offenders armed themselves with guns to gain compliance from their victims and only killed when 'things went wrong' (e.g. Cook, 1982, 1979). The Courts ruled most of the primary homicides to be murders (42%), those with ostensibly lawful motives to be culpable homicides (63%),<sup>141</sup> and those with

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136 Which also meant an increase in the frequency of shootings that involved extremely low levels of restraint.

137 Usually a body was found and there was little evidence of the shooter's identity or the precipitating circumstances.

138 Including: conflict between rival street gangs (37%), politically motivated killings (24%), murder-suicides (18%), other primary homicides (8%), intimate homicides (7%) and drive-by-shootings (5%).

139 Comprising: self defence (43%), accidents (39%) and arrests (18%).

140 The predominance of primary over secondary homicides in this sample is probably due to the focus on fatalities.

141 Which amounts to negligence.

unknown motives to be unlawful but unspecified (46%).

The very high proportion of unlawful shootings in which the offence was not specified mirrors the fact that the majority of these cases never went further than inquest courts. This was generally because the available evidence was not sufficient to enable a criminal trial. Inadequate evidence also prevented inquest courts from deciding lawfulness in a high proportion (26%) of these cases, particularly those that were politically motivated.<sup>142</sup> Notably 57% of the shooters who were involved in unlawful homicides were never tried because they were not identified or traced by the police. Hence, few of those who used guns with an extreme lack of restraint -- sufficiently low for the Courts to find such shootings unlawful -- were brought to trial and even fewer were held criminally liable for the deaths of their victims.

Although shortcomings at more than one point in the legal process are likely to have contributed to this outcome, a low quality of police investigation was a primary factor. In the process of collecting and analysing this research data, the following types of shortcomings were noted on the part of the SAP: not having necessary forensic or ballistics tests conducted, not reconstructing crime scenes, paltry efforts to identify and trace key witnesses and alleged shooters (Hansson, 1996). Although this points to a definite problem in policing, the aggravating circumstances at this time should not be overlooked. The political conflict made for chaotic and dangerous conditions in the townships. There was also an intense mistrust, fear and antagonism between black communities and the SAP, which translated into a very low level of co-operation.<sup>143</sup>

At first glance, the figures from this study point to civilian rather than police shooters as the problem in relation to criminal firearm homicides. More specifically, the Courts found 50% of the civilian, 31% of the PSO and only eight per cent of the police gun homicides, to be unlawful.<sup>144</sup> Since the average level of restraint employed by each of these three groups was not markedly different, the lower incidence of unlawful findings in police shootings should not be taken at face value. For this could also indicate leniency on the part of the Courts in the treatment of police who killed.

### **The Impact of Political Conflict**

Considering the widespread political violence that took place between 1984 and 1991, the lack of restraint in the use of firearms revealed in this research might have been part of a generalised readiness to use force. In other words, restraint in gun use may have been lower than usual *because* of the civil war. Although this research

142 Only 17% of the non-political and 31% of politically motivated cases were undetermined.

143 An inquest magistrate commented explicitly on black people's reluctance to give evidence at this time (Wynberg Inquest 372/91).

144 However, Special Constables were over-represented in criminal homicides, both as shooters (51%) and victims (50%).

sample did not enable an adequate test of the premise because it excluded the pre- and post-war periods,<sup>145</sup> the role of political motivation in gun homicides was specifically examined. Somewhat surprisingly, less than a third (31%) of these fatal shootings were found to have been politically motivated but, as hypothesised, these shooters employed a lower average level of minimum force. In particular, less use was made of oral warnings, warning shots and aiming at victims' legs. However, the average level of proportionality was not substantially different in these political and non-political firearm homicides. The large majority (84%) of the politically motivated homicides were perpetrated by police officers and involved civilians who were shot while protesting.<sup>146</sup> By contrast, politically motivated firearm homicides were not common among civilian (11%) or PSO shooters (4%). It is disturbing to note that the Courts found the majority (76%) of these police shootings to be lawful despite the generally low level of restraint employed and the fact that bystanders were frequently endangered in these incidents.<sup>147</sup> However, a similar percentage (80%) of the non-political fatal police shootings were also ruled justifiable. It thus seems that the Inquest Courts were generally lenient in assessing the lawfulness of fatal police shootings, although more so in politically motivated cases: here the Courts were more likely to leave cases undetermined (18%) than to rule them unlawful (6%).<sup>148</sup> The opposite trend was apparent in *non*-political gun homicides by police.<sup>149</sup> Previous research supports the finding of lenience on the part of the Courts in relation to SAP violence, particularly that perpetrated during political conflict (e.g. Weitzer & Repetti, 1991; Hansson, 1990[a]; Foster & Luyt, 1986). It is interesting to note that relatively few of the cases in which police fatally shot political protesters were justified in terms of crowd dispersal or the Emergency Regulations. Instead, these officers tended to use arrest or self defence as justifications for killing during political conflict.<sup>150</sup>

A number of empirical studies have shown significant correlations between increases in non-natural deaths and gun homicides during periods of intensified political conflict in Cape Town (e.g. MacDonald & Lerer, 1994; Hoffman *et al*, 1986; Knobel, 1986). This investigation also indicated such a temporal association: the rate of politically motivated shootings sky-rocketed in 1985 when the political conflict first intensified in this area. It then declined slightly but remained above the pre-war rate into 1991. In addition, more of the politically motivated shootings took place in African residential areas which constituted flashpoints of political conflict in the greater Cape Town area.

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145 Furthermore, political conflict has not yet ceased, although it is no longer over Apartheid.

146 These shootings comprised 48% of police gun homicides.

147 Most of the PSO and civilian shootings remained undetermined.

148 Lawful: police (79%), PSOs (56%) and civilians (29%).

149 Undetermined (8%) and unlawful (12%).

150 Self defence (36%) and arrests (27%).

## CHAPTER TEN

### WHAT IS TO BE DONE?

#### BEYOND 1991

##### Generalisability

This empirical study highlighted a range of problems pertaining to the use of guns in Cape Town during the civil war years and these point to specific policy interventions. But there has been major sociopolitical change in this country since 1991: most noticeably the civil war over Apartheid was formally brought to an end, the Apartheid State has been replaced and government has been profoundly restructured. Hence, the question is: are these still the key problems with respect to firearms in contemporary South Africa? In other words, can these findings be reliably extrapolated beyond the original research area and period?

According to accumulated research, spatial variations in gun use should be expected (e.g. Geller & Scott, 1992). For instance, because firearm homicide is frequently more prevalent in large cities, restraint in gun use may have been worse in urban Cape Town than in rural areas of South Africa. This investigation indicated that the rate of gun death, particularly due to homicides, was consistently higher in Cape Town than in the country as a whole. However, the Western Cape did not suffer the worst of the political conflict: metropolitan Cape Town experienced its most intense political violence at the start of the war in 1985 and 1986.<sup>1</sup> Since 1987, however, the vast majority of deaths due to political conflict have occurred in KwaZulu-Natal and Gauteng (The SAIRR, 1992).<sup>2</sup> Similarly, ICD statistics for 1997 indicate that the Western Cape is fourth out of the nine provinces with respect to police killings and fatal shootings: KwaZulu-Natal (34%), Gauteng (28%), Eastern Cape (10%) and the Western Cape (8%) (Bruce, 23 July 1997). Arguing in favour of generalising some aspects of these research findings beyond pre-1992 Cape Town is certainly not meant to deny or underplay inter-regional differences. To the contrary, empirical research is urgently needed to map these specificities. But at this stage, in the absence of evidence indicating that Cape Town was characterised by a significantly lower level of restraint in gun use than other urban areas in this country, it would seem reasonable to hypothesise that this was a national problem.

The increased prevalence and use of unlicensed fully-automatic firearms is a current priority in South Africa (The Inter-Departmental Strategy Team, 1996[b]). The black market in illegal assault weapons has flourished in this country particularly

1 Although there was a resurgence of faction fighting in 1991 due to the taxi wars.

2 On average 72% and 20% resp.

since 1991, and these guns have been used increasingly in the ongoing political conflict in KwaZulu-Natal and Gauteng (The Argus, 7 September 1993; The Goldstone Commission, 1993 resp). Predictably then, combat firearms did not emerge as a key problem in this research because of the focus on Cape Town in the period before 1992.

In relation to temporal reliability it could be argued that the low levels of restraint revealed by this study were a product of the civil war conditions and that people are likely to employ greater restraint in their use of firearms now that the major conflict is over. Without a doubt the Anti-Apartheid civil war made this country a particularly violent place. Between the onset of the fighting in 1984 and the early stages of the so-called transition in 1991, the national mortality rate due to political conflict increased twelvefold and in 1994 the rate was still six-times higher than the pre-war level: one death per 100000 people in 1984, 12 in 1991 and six in 1994 (The SAIRR, 1994 to 1984). Nevertheless, it is important not to attribute high levels of interpersonal violence in South Africa solely to this particular political struggle. This was a violent society long *before* the outbreak of the recent civil war and politically motivated violence has continued to rage between different groups since the formal removal of the Apartheid State (e.g. Bradshaw *et al*, 1984; The Inter-Departmental Strategy Team, 1996[b]; The Sunday Independent 13 October 1996 resp). What the civil war did was to exacerbate an already high level of violence, particularly *firearm* homicide.

The level of violence has *not* decreased since the civil war officially ceased. To the contrary, both violent crime and politically-related violence appear to be spiralling upwards (e.g. The Mail & Guardian, 26 Jan - 1 Feb 1996; Nedcor, 1995; The Ministry of Safety & Security 1995; Scharf, 1994[a]). Indeed, South Africa now has the infamous title of the most violent country in the world (The Argus, 7 September 1993). Significantly, guns seem to be playing an increasing role in the perpetration of violence. Although comprehensive reliable national data have been lacking in this respect, available conviction statistics have shown an upward trend in the unlawful use of guns since 1991: convictions for murder and robbery with firearms rose by six per cent and 10% respectively between mid-1990 and mid-1994 (The CSS, 1995 to 1989). The nineties have also seen an increase in violence against the police and deaths in the line-of-duty (Cilliers & Van Zyl Smit, 1995; The Commissioner of the SAP, 1993 to 1984). Police officers in this country are now at greater risk of homicidal death.

Heightened violence has not been limited to the civilian population. In spite of radical reform, the SAP 'tradition' of excessive force appears to have continued within the new police service. A recent investigation of human rights violations by



police between 1990 and 1995 concluded that:

"... torture, assaults and unlawful shootings continue to remain features of policing under the new dispensation. ... [H]uman rights violations are a systemic and nationwide problem within the police" (The Network of Independent Monitors *et al*, 1995:1).

More specifically this report outlined factors contributing to the continued use of excessive force by the SAPS. Since these variables ought to be taken into account in developing current interventions they have been summarised in Table 10.1.

**Table 10.1: Summary of Factors Contributing to Excessive Force by SAPS, 1990-1995.**

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- \* A 'siege mentality' and high level of fear within the SAPS.
  - \* Continued use of assault firearms and high velocity ammunition for general law enforcement.
  - \* Frustration and low confidence in the legal system among police.
  - \* Inadequacies in police methods of arresting and restraining suspects.
  - \* A 'trigger-happy' and 'shoot-to-kill' attitude among police.
  - \* An ineffective and poorly implemented police procedure for monitoring police gun use.
  - \* Ineffective and highly partial mechanisms for investigating injuries and deaths caused by police.
  - \* Law and policy that condones the use of deadly force with little restraint.
  - \* A high level of impunity from criminal sanction for police officers who injure or kill.
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*Source:* The Network of Independent Monitors *et al*, (1995).

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Regrettably then, the available evidence does not suggest a disappearance of the overall problem of excessive force by police or civilians in the contemporary South African context.<sup>3</sup>

The primary problem identified by this study -- a high and rising rate of gun homicide -- has continued into the mid-nineties in Cape Town. In 1994 firearms were the second leading cause of homicidal death in this city and were responsible for a much higher proportion of homicides than previously (The MRC, 1995). According to the public health authorities the incidence of injury and violence in this city are "disturbingly high" and "contribute significantly to the burden of disease" (The MRC, 1995:i). Furthermore, the young ages of many of those who die in this way results in an enormous loss of potential years of life due to non-natural death, e.g. 130000 potential years of life in 1994, which was almost half the total lost

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3 Including unrestrained gun use.

due to all causes (The MRC, 1995:i).

In some respects gun-related death has worsened in this area since 1991. The rate of firearm suicide has increased and the already high rate of police suicide has sky-rocketed (The MRC, 1995; The Commanding Officer of the W.Cape SAPS, 13 April 1995 resp.). It also seems likely that unintentional shootings have increased given the substantial growth in gun ownership which has taken place over the past few years.<sup>4</sup> As a consequence the profiles of gun victims are probably changing: for instance, the increased prevalence of guns among black civilians is likely to place this group at heightened risk of firearm suicide and domestic gun accidents. Indeed, there is some evidence indicating that by 1994 coloured people had become a high-risk group for gun suicide in Cape Town (The MRC, 1995).

On the positive side, however, ICD figures suggest a recent decline in fatal shootings by the *police* in the Western Cape. In the three months between April and June 1997, seven firearm homicides were perpetrated by police in this region (Bruce, 23 July 1997). If this level remained constant throughout 1997 the total would be 28, which is substantially lower than the annual total of 47 that occurred in the smaller area of metropolitan Cape Town during 1991. This progress may well reflect the impact of police reforms, including the depoliticised and community-oriented service role now played by the SAPS, who are no longer at the frontline of the political conflict. Even though the use of deadly force by the SAPS appears to have improved somewhat since 1991, it would seem important to continue treating the police as a key target group for gun-related interventions. They constitute important role models for gun use and visible attempts to reduce the unnecessary use of deadly force by police may serve to enhance public confidence. Furthermore, the existing commitment to change within the SAPS is a favourable context for intervention.

Although the police may now be responsible for fewer fatal shootings, this advance may have been accompanied by a deterioration within another group of gun users -- armed private security officers (PSOs) -- who now outnumber the public police and are also responsible for fatal shootings. However, reliable counts of PSO shootings have not been forthcoming, which makes the overall level of gun homicides perpetrated by law enforcement officers in this country at present uncertain. This is a matter requiring urgent attention.

To conclude, because gun use must have changed in this country since 1992, likely shifts and reforms that have already been implemented have been taken into account in recommending interventions. Furthermore, proposals have not been limited to the findings from this study but have been based on accumulated research in this field.

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4 Although up-to-date figures were not available.

## **Key Reforms**

### ***Introductory Comment***

This research was focused on the civil war years between 1984 and 1991 but profound changes have since taken place in South Africa. For the first time in history this country has a democratically elected government committed to non-racism, a Constitution and a Bill of Rights that guarantee internationally accepted human rights. Although the formal system of Apartheid has been dismantled, the consequences of 43 years of institutionalised racial oppression and a civil war endure. This is a society in transition; a nation in a state of flux: numerous reforms are still on the drawing board, some are in the process of being implemented and others are too recent for their impact to be evaluated fairly. Notably, many interventions suggested by researchers for reducing excessive force by the South African police have now been implemented. These, and other changes that are likely to have affected restraint in contemporary gun use, have been considered in this section and what remains to be done has been discussed thereafter.

### ***Developments in Gun Control Legislation***

South Africa has a rather comprehensive body of law intended to regulate the manufacture, supply, possession, carrying and use of firearms.<sup>5</sup> Like many Western nations this gun control legislation has long been the dominant type of intervention in relation to firearms. In recent years firearm law has been developed in rather traditional ways: the range of criminal offences pertaining to guns has been expanded,<sup>6</sup> punishments for offences involving guns and repeat offending have been increased, and mandatory minimum sentences for certain gun-related offences have been introduced. Arguably, the following have been among the most notable reforms made during the nineties: increased restrictions on the carrying of firearms, stricter requirements for safe-keeping, a "sound reason" for possession and certified competence as prerequisites for gun licensing.<sup>7</sup> The current Act contains the basic legal provisions that have generally proven most effective (e.g. Kleck & Patterson, 1993).

### ***Constructing a 'Gun Problem'***

The nineties have seen the development of a particular conception of firearms as a social problem which significantly informs the nature of contemporary gun-related interventions. In short, illegal possession and the use of firearms to perpetrate crime are seen as the core of the firearm problem. More specifically, according to the

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5 Discussed at length in Chapter Three.

6 See Figure 3.19.

7 See Chapter Three for details of reforms after 1991.

### National Crime Prevention Strategy (NCPS):

"[i]t is clear that the availability of firearms in South Africa contributes to higher levels of violence associated with crime ... thereby increasing the costs to society, both in terms of physical loss of life and injury" (The Inter-Departmental Strategy Team, 1996[b]:30-1).

This quote reveals the following three basic premises: (1) the availability of guns has increased in contemporary South Africa; (2) this has resulted in a higher incidence of gun use in the perpetration of crime; and (3) as a consequence, there are now more deaths and injuries associated with crime. Since it has also been assumed that most offences are committed using *unlicensed* guns, it is illegal firearms that have been the focus of attention. In keeping with this understanding of the problem, the State's gun-related interventions have been almost exclusively focused on the removal of illegal guns from society. Reducing gun prevalence has also been adopted as the main objective of the Gun Free South Africa Campaign (GFSA), the principal non-government organisation in this arena.

### ***Police Campaigns against Unlicensed Firearms***

During the civil war years the Nationalist government published very little information about the State's gun control initiatives. Over this period active prohibitionist organisations like the GFSA Campaign were absent and it seems that the intense violence of the civil war overshadowed the rather specific issue of firearms. But since the so-called transition to democracy, there has been a marked increase in discourse on gun-related interventions.

In 1990, the police launched an intensive campaign to trace and confiscate illegal guns within the country (The Goldstone Commission, 1993). To this end, specialist police units dealing with firearms were restructured and the number was increased (The Argus, 7 September 1993). The police intelligence mechanism was improved and a widely publicised system of monetary rewards for relevant information on illegal firearms was introduced. Police intensified activity in high crime areas, for example: during Operation Alpo on the Witwatersrand, 59 people were arrested for the illegal possession of guns and 39 illegal firearms with 532 rounds of ammunition were confiscated over a two month period (The Commissioner of the SAP, 1992:49). The police also employed surprise raids, for instance: at the height of the taxi-war in the Cape Peninsular, police conducted a series of surprise searches at taxi-ranks in Nyanga and Khayelitsha (The Weekend Argus, 27-28 May 1995; The Argus, 2 December 1994). Together the police and the army also carried out house-to-house searches in politically volatile areas like KwaZulu-Natal (The Argus, 17 August 1995). By 1993 the police stated that this approach had proven effective and this was reinforced by the Goldstone Commission (1993) which endorsed the ongoing use of the strategy. Furthermore, the Minister of Safety and

Security emphasised that the police are highly motivated to decrease the prevalence of illegal firearms, not only to reduce violent crime, but to lessen the danger to which they are exposed (Hansard, 11 May 1995). In recent years there have been increases in reports of illegal possession and illegal firearms confiscated by police (The Cape Times, 17 March 1995; The Commissioner of the SAP, 1993).

This aspect of the police campaign was concerned with locating illegal guns already *inside* the country. However, an increasing proportion of illegal firearms were smuggled into South Africa, particularly from Mozambique via Swaziland and from Angola via Namibia. Trade in illegal weapons from such nations was fuelled by the availability of numerous military weapons left over from recent civil wars combined with intense poverty and severe drought conditions (The Sunday Times, 27 August 1995). The fact that many of these guns are capable of firing continuous bursts of hundreds of high velocity bullets has made contemporary gun running a high priority issue. There has been particular concern over the use of fully-automatic firearms in ongoing political conflict between the ANC and IFP in KwaZulu-Natal. In late 1992 the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation held public hearings to consider: "... ways and means of curbing the illegal importation of automatic weapons and their distribution and use in South Africa in the furtherance of political violence" (The Goldstone Commission, 1993:1). The Commission made a range of recommendations which included inter alia: additional funding for police campaigns aimed at preventing the entry of illegal guns; the acquisition of scanning equipment to check for concealed firearms in goods-loads entering the country and a number of legal amendments.<sup>8</sup>

Despite the State's concerted efforts, the trade in illegal automatic weapons has continued. This problem has subsequently been afforded priority within the NCPS and in 1995 the police launched Operation Safety to limit the flow of illegal firearms from frontline states into South Africa. In addition, the government has sought to foster regional co-operation in order to stem gun smuggling. South Africa and Mozambique have signed a treaty and agreed to conduct joint missions to locate and destroy illicit gun caches in Mozambique. A committee has been established to integrate the police intelligence services of Mozambique, Swaziland and South Africa so that information on gun-running can be pooled (The Sunday Times, 30 April 1995). Operation Rachel was instituted as part of this venture in June 1995. This comprised search and destroy missions into Mozambique by joint South African-Mozambiquan police units and, by August 1995, 70925 illegal weapons had been seized (The Cape Times, 14 July 1995; The Weekend Argus, 24-25 June 1995; The Argus, 22 August 1995 resp).

Police successes in Mozambique have made it a less hospitable context for gun

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8 Including: requiring routine carrying of gun licences and production at police request, making failure to produce a licence an offence, and empowering police to confiscate guns and ammunition if licences are not produced.

runners. Hence this enterprise has been gradually shifted to Angola, a country that has been less intensively policed. Here, Unita soldiers have been a key source of illicit firearms. The weapons have generally been bought -- at around fifty rand for an AK-47 assault rifle with a few clips of ammunition -- by Xhosa women who work the Namibian-Angolan border, and then collected at border points like Rundu, shipped to Windhoek and transported by road into the Western Cape and Gauteng (The Sunday Times, 30 April 1995). In response to this shift in gun trafficking, police have now targeted the route used to bring illegal guns from Angola into South Africa (The Weekend Argus, 9-10 September 1995).

Over the past few years another noteworthy change has taken place in illegal trade in southern Africa. Organised gun-running has long been the province of crime syndicates which have recently expanded their activities beyond guns, mainly to stolen cars and drugs. In view of the shifting patterns of illegal trading in this region, South Africa, Mozambique, Swaziland and Zimbabwe have adopted a collaborative approach to combatting organised crime in southern Africa (The Argus, 22 August 1995). To sum up, during the nineties the key objective of police interventions in relation to guns has been to reduce the number of illegal firearms in this country.

### ***The National Crime Prevention Strategy***

Rising crime has been recognised as a major impediment to the process of reconstruction and development currently underway in South Africa. Indeed shortly after the 1994 election the government identified the prevention of crime as a national priority and, in March 1995, the cabinet formally introduced the National Crime Prevention Strategy (NCPS). This multifaceted, long-term approach comprises a large range of national, provincial and local-level interventions aimed at preventing offending (The Inter-Departmental Strategy Team, 1996[b]). Crime involving firearms has been designated as one of seven categories of offences requiring priority treatment in this strategy.<sup>9</sup> Since the launch of the NCPS, State gun control has become an integral part of the NCPS. The primary gun-related objectives adopted by May 1996 have been summarised in Table 10.2. The police were clearly the key role-players in gun-related initiatives during the first year of operation, although inter-agency co-operation has been stressed as a central aspect of the NCPS.

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9 The other six are: organised crime, white collar crime, gender violence and crimes against children, violence associated with intergroup conflict, vehicle theft and high-jacking, and corruption within the criminal justice system.

**Table 10.2: Primary NCPS Objectives re Firearm Crime, May 1996.**

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**The SAPS**

- \* Establish a national computerised firearm register.
- \* Set up a national desk to co-ordinate police strategy in relation to illegal firearms.
- \* Create specialised police task forces for dealing with illegal firearms.
- \* Introduce specialist police firearm units in the former TBVC territories.
- \* Foster co-operation from neighbouring countries.
- \* Undertake joint operations with police in borderline states to seize illegal firearms.
- \* Improve police intelligence with respect to gun smuggling.
- \* Continue the reward system for information on illegal firearms.
- \* Help customs officials improve controls at border crossings.
- \* Develop technology for identifying illegal guns hidden in cargo.
- \* Enhance regulation of firearms within the SAPS.
- \* Improve enforcement of legal controls on licensed firearms.
- \* Build working relationships with key organisations such as the South African Gun Owners Association and the Firearm Dealer's Association.
- \* Identify priority areas for intensive crime prevention operations.

**The South African National Defence Force (SANDF)**

- \* Develop a reaction force capacity, together with the SAPS, to enable swifter responses to violent crime incidents.
- \* Improve SANDF intelligence in relation to gun smuggling.
- \* Assist the SAPS in patrolling border crossing points.
- \* Enhance regulation of firearms in the SANDF.
- \* Conduct search-and-seizure operations to locate illegal caches of firearms in neighbouring countries.

**The Secretariat for Safety and Security**

- \* Conduct a critical evaluation of gun control legislation.

**The Justice System**

- \* Hold firearm-related prosecutions in higher courts to enable the imposition of heavier sentences.
- \* Conduct more comprehensive assessments of bail applications in gun-related cases.

**The Department of Correctional Services**

- \* Improve control over firearms in the department.

*Source:* The Inter-Departmental Strategy Team (1996[b]:30-3).

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Although it is too early for a fair assessment of the success of the NCPS in relation to firearms, a number of particularly positive aspects are worth emphasising. The NCPS is the first large-scale planned and co-ordinated approach to gun-related crime

and it has drawn attention to firearm-related issues in South Africa. Because the strategy makes allowance for a wide range of state and civil initiatives it is likely to encourage innovation in the 'firearms arena'.

### ***Encouraging Voluntary Surrender***

Since the 1994 election, a number of periods of indemnity from prosecution have been offered as a means of motivating people to surrender their unlicensed guns and ammunition (The Cape Times, 8 December 1994). These amnesties have been aimed specifically at disarming the so-called private armies and self protection units that developed out of the civil war (The Sunday Times, 20 August 1995; The Cape Times, 15 December 1994). Overall, such voluntary initiatives have not met with resounding success. The previously lax administration of firearms by State authorities in the former TBVC states has been identified as a key factor enabling illegal possession. Firearm owners in these regions have thus been required to re-register or surrender their firearms. This strategy does not appear to have been very successful, however, as only 23% of licensed guns were re-registered by the deadline in September 1996 (The Sunday Independent, 6 October 1996).

### ***The Gun Free South Africa Campaign (GFSA)***

The GFSA Campaign was the first nationally organised non-government gun control initiative in South Africa. The initial objective was:

"[t]o make a material contribution to peace and stability in South Africa by involving the people of the country in eliminating guns from our society and by actually removing and destroying a significant percentage of those guns" (GFSA Campaign, 1994[a]:1)

The Campaign was established by a coalition of religious bodies in mid-1994, but was subsequently endorsed by a wide range of non-government organisations (NGO) and the leaders of all the major political parties, including President Mandela himself (The Cape Times, 15 December 1994). The GFSA Campaign was launched on the Day of Reconciliation -- 16 December 1994 -- by way of a day-long nationwide voluntary hand-in of legal and illegal firearms. Anyone in possession of guns or ammunition was encouraged to surrender these at churches and police stations throughout the country. Those who handed in unlicensed firearms were automatically granted immunity from prosecution. The guns that were collected were welded closed under police supervision and destroyed (The Cape Times, 9 December 1994).<sup>10</sup> The hand-in was widely publicised and raffle tickets for substantial cash prizes were used as an incentive (The Argus, 1 December 1994). In the Western Cape, street gangs were specifically targeted and one gang even publicly

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10 Melted down at an iron and steel plant.



challenged rivals to match their contribution (The Weekend Argus, 17-18 December 1994).

The broader aim of the GFSA campaign was to educate the public, particularly children, with regard to the dangers of owning guns (The GFSA Campaign, 1994[a]:2). As part of the GFSA launch children were invited to hand in their toy guns and a major chain store agreed to refrain from stocking authentic-looking toy guns (The Cape Times, 9 December 1994). Every child who participated was awarded a certificate signed by Nelson Mandela and bearing the words: "I pray you will grow up in a South Africa free from violence and free from fear". A number of schools in economically disadvantaged areas were given a library book for every toy gun handed in by a pupil (The Weekend Argus, 3-4 December 1994).

Unfortunately, however, the immediate success of this project was extremely limited. A total of 327 guns and 6800 rounds of ammunition were collected for the entire country (The GFSA Campaign, 1994[b]:2). Even in the Western Cape, where the programme was best publicised and most successful, only 108 guns were handed in.<sup>11</sup> Indeed Campaign representatives admitted being "a little disappointed" with the outcome, especially in view of the poor results achieved in violent areas (The Cape Times, 20 December 1994; The Sunday Times, 18 December 1994). This experience bred the realisation that "it will take time to change the gun culture" (The GFSA Campaign, 1994[b]:1; The Argus, 20 December 1994 resp). The organisation emphasised subsequently that this "call for people to reconsider their need to own a firearm and to voluntarily hand in weapons for destruction" was only a first step.

The GFSA Campaign modified its techniques hereafter. In an interview conducted in late 1995, a representative highlighted research, lobbying, campaigning and public education as the new key strategies (The GFSA Campaign, 4 September 1995). And the organisation adopted the following objectives for 1995: (1) to make a submission to the Constitutional Assembly opposing the inclusion of the right to bear firearms in the new Constitution; (2) to assist in establishing a committee to review the law on firearms and to acquire representation on this body; (3) to set up a national committee for the GFSA Campaign comprising representatives from every region; and (4) to organise an annual national conference on gun control (The GFSA Campaign, 1995). Nevertheless, the GFSA Campaign has remained strongly prohibitionist in orientation, with the focus on disarming civilians, stricter gun licensing laws and tougher measures against unlawful possession.

This is the first politically powerful prohibitionist lobby in South Africa and its emergence has been met with a backlash from anti-prohibitions, as has been the case in most countries (The Argus, 1 December 1994). The stage is set for political

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11 And 34 in Johannesburg, 16 in KwaZulu-Natal, 15 in Eastern Transvaal, 14 in East London and nine in Grahamstown.

warfare between these camps; a gun-control-controversy is in the making.

### ***Changes to Deadly Force Law***

The highly controversial extra-ordinary legal powers that were afforded members of the security forces under the Security Emergency Regulations and the Defence Act 44 of 1957 have been terminated (Burchill & Milton, 1994). In 1991, a process of reforming the law and policy governing public protest in South Africa was initiated and in 1993 the Regulation of Gatherings Act 205 was passed.<sup>12</sup> Promoting peaceful public protest, even when illegal, is the ethic embodied in the new legislation. The preamble to the Act states that:

"[i]t is the right of every person to assemble with other persons and to express his[her] views on any matter freely and publicly and to enjoy the protection of the State while doing so".

Emphasis has been placed on planning for public gatherings in order to limit disruption to everyday business and damage to life and property. To this end, the police must aim to prevent injury to persons and property damage, and must notify convenors if they believe they will be unable to provide adequate protection for participants. Significantly, the Act stresses negotiation and other non-violent methods to achieve these goals.

The police are permitted to employ force in the context of public gatherings if an officer, no lower than the rank of Warrant Officer, has reasonable grounds for believing that a life or property are endangered and that the danger cannot be averted by peaceful means. Under these circumstances the officer concerned is required to obtain the attention of the assembled persons and call upon them to disperse, within a reasonable period of time, from the place where they are gathered. This order must be audible and issued in at least two of the official languages. If possible, it should be given in a language that is likely to be understood by the majority of those gathered. If the people concerned have not dispersed or have made no preparation to disperse after the specified time, the officer in charge may order the police to disperse the gathering using force but "excluding weapons likely to cause serious bodily injury or death". Furthermore, the minimum force necessary to disperse a gathering must be used, and the force must be proportional to the circumstances and the object to be attained. The legislation expressly restricts the police use of deadly force and lethal weapons to circumstances in which killing, serious injury or significant damage to valuable property is likely. An order to use deadly force must be given by a relatively senior officer, who must believe that deadly force is the least force necessary to prevent the violent actions in question: s/he must consider all other methods to be ineffective or inappropriate. Even under these conditions, the

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12 See Todd (1994).

force used must be moderated and kept proportional to the circumstances and the objective.

**Table 10.3: Summary of New Restraints for Dispersing Public Gatherings.**

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- \* The minimum force necessary to disperse the gathering or avert killing, serious injury and/or severe damage to valuable property.
  - \* Proportionality between the force employed and the objective, i.e. dispersing a gathering or preventing death, serious injury or severe damage to valuable property.
  - \* Whenever feasible:
    - first use negotiation and non-violent methods to disperse a gathering;
    - if necessary, give audible orders to disperse in a specified time;
    - allow those gathered sufficient time to comply with orders to disperse;
    - if a gathering fails to disperse, use less-than-lethal force to disperse it;
    - use deadly force only to avert killing, serious injury and/or serious damage to valuable property.

*Source:* The Regulation of Gatherings Act 205 of 1993.

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The new legal approach to public protest is certainly a substantial improvement. Disappointingly, however, it still violates proportionality by permitting the use of deadly force to defend property.

In 1993 the AD ruled that during arrests, police were required to verbally warn of their intention to shoot and to fire a warning shot before shooting to kill (The Minister of Law and Order v Ntsane, 1993). Additionally, under the new constitution,<sup>13</sup> an arrestee now has the right to "promptly be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement". In early 1996 the constitutional validity of section 49(2) -- which permits the use of deadly force in order to effect an arrest or prevent an escape -- was challenged following the controversial killing by police of a 10 year old boy (*The Sunday Times*, 24 March 1996). The Minister of Safety and Security defended the section as vital for effective policing, but the Minister of Justice stated that he was not supportive of the provision (*The Sunday Times*, 24 March 1996). This issue has generated heated controversy and debate over the optimal minimum standard for arrest (e.g. The National Standards & Management Services Division, 3 March 1997).

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13 Act 200 of 1993 as amended.

### ***Changes to Police Standing Orders***

In response to sustained criticism the National Standards and Management Services Division of the SAPS undertook to develop an improved set of National Police Standing Orders (Scharf, 5 November 1995). As part of this endeavour, and in reaction to the controversy over the arrest-law, a Special Service Order on the use of force in police arrests was issued in late 1996 (The SAPS Special Service Order, 1996). The stated rationale was to bring police regulations into line with constitutional requirements pending expected legislative reform and the Director summarised the key change as follows: "the offences in respect of which lethal force may be used have been limited [further]" (The National Standards & Management Services Division, 3 March 1997).

To elaborate: the police may no longer use deadly force in the arrest of persons suspected of the following offences: sodomy, bestiality, receiving stolen property, fraud, forgery, theft (except for livestock and motor vehicles), and offences relating to coinage (The SAPS Special Service Order, 1996).<sup>14</sup> However, police may use deadly force in the arrest of certain *additional* categories of suspects: those suspected of any offence relating to intimidation, terrorism or control over armaments, arms, ammunition, explosives, drugs or radioactive material, for which the punishment is at least five years imprisonment, any offence involving serious violence which is life-threatening including the use or threatened use of a firearm or explosives. According to the National Commissioner of the SAPS this change is intended to:

"... prohibit police from shooting persons suspected of having committed petty crimes, while ensuring that police may use proportionate force, including lethal force, when it is warranted" (3 March 1997).

But this does not appear to be altogether accurate, for although deadly force may no longer be used to arrest those suspected of relatively minor offences, it is still permitted in relation to suspected theft of livestock and motor vehicles. The reform is clearly an attempt to enhance proportionality: the Orders state that if the degree of force to be used to arrest is disproportionate to the seriousness of the suspected offence, force should not be used, even if this results in the suspect evading arrest. Section 8 is something of a lengthy caveat to Section 3 and seems to be a brace included to strengthen the proportionality requirement which nonetheless falls short of the defence-of-life standard. These regulations still permit police to kill non-dangerous, fleeing suspects and the nature of the suspected offence -- a rather unreliable predictor of dangerousness -- has been retained as the decisive factor. In

14 Lethal force may still be used in the arrest of suspects for the following Schedule One offences: treason, sedition, murder, public violence, rape, robbery, assault with intent to do grievous bodily harm, kidnapping, childstealing, arson, breaking or entering with intent to commit one of these listed offences, escaping from lawful custody where the person is in custody for one of these offences or for the offence of escaping.

other words, proportionality has been sought between the force used and the seriousness of the suspected offence, rather than with the actual danger to be averted. As has already been argued, violent behaviour by suspects at the time of an arrest is the most reliable indicator of threat and a fairer criterion for decisions to use lethal force.<sup>15</sup> It is also easier for officers' to remember than a list of offences and enables more rapid decision-making under stressful conditions. To elaborate further:

"[police firearm policy] based on the dangerousness of a suspect confronted by police is preferable to one based on the nature of the original offence. The two factors are obviously related, but a policy based on danger can be clearer and more concise, can exclude many questionable shootings, and need not require an officer to attempt so elaborate an evaluation of the facts before deciding whether to shoot" (Milton *et al* 1977:130).

**Table 10.4: Summary of New Criteria for Police Arrests and Preventing Escapes.**

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- \* The use of force must be authorised by law.
  - \* The force used must be the minimum reasonable in the circumstances.
  - \* Force may only be used if a suspect resists attempts to arrest her/him, or flees to escape arrest.
  - \* Force may only be used when a suspect cannot be arrested without the use of force.
  - \* The force used must be reasonably necessary under the circumstances, to overcome a suspect's resistance or prevent a suspect from fleeing.
  - \* The degree of force must be proportional to the seriousness of the suspected offence.
  - \* Force likely to cause death is permissible only in relation to those reasonably suspected of the offences (listed in Section 4).<sup>16</sup>
  - \* If force is to be used, whenever feasible a clear warning must be issued to the suspect that force will be used against her/him unless s/he submits to arrest.
  - \* A warning shot must precede any shot fired at the suspect, unless the firing of a warning shot may endanger the lives of other people or could reasonably be expected to cause the person to escape.

*Source:* The SAPS Special Service Orders (1996).

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Despite this rather serious limitation, other aspects of the Orders constitute a significant improvement. Importantly, restraint in the use of deadly force and the basic principles of minimum force and proportionality have been explicitly stressed along with actual restraints required, such as warning shots and verbal warnings.

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<sup>15</sup> See Chapter Four.

<sup>16</sup> Discharging a firearm at a person is defined as deadly force irrespective of the part of the body aimed at (Section 5).

Notably Section 2 underscores the fact that:

"... force need not necessarily be applied during an arrest. ... [And that] the purpose of the use of force in such circumstances may only be to confine the body of the person and may never be to punish" (The SAPS Special Service Order, 1996).

Strict adherence to these Orders is stipulated and the regulations have been presented with greater clarity yet more specificity, than previous Standing Orders.

### ***Structural and Legal Changes re the Police***

In 1994, after 16 months of work by a multidisciplinary technical committee, a draft of the police bill was released for public comment (The Sunday Times, 20 August 1995). Its overall objective was to establish a new identity for the police in Post-Apartheid South Africa as contemplated in the Constitution,<sup>17</sup> and more specifically, "to create a highly professional, accountable, impartial and transparent Police Service" (The Weekend Argus 2-3 September, 1995). However, this draft bill was withdrawn rather rapidly under a barrage of criticism. It was subsequently modified in the light of broad consultation and finally enacted in late 1995 as the South African Police Service Act 68. This lengthy piece of legislation details a new set of aims and structure for the SAPS, as well as a range of regulatory mechanisms.

The implementation of these legislated requirements has been orchestrated by nine provincially-based Change Management Teams. Executive control of the SAPS no longer resides with the militaristic State Security Council but with parliament, a civilian Secretariat for Safety and Security and an Executive Co-ordinating Committee.<sup>18</sup> The main purpose of the Secretariat is to ensure civilian oversight, democratic accountability and transparency of the SAPS. More specifically it has been tasked with evaluating the functioning of the SAPS, developing and monitoring the implementation of police policy and conducting other relevant research.<sup>19</sup>

The SAPS is structured at both national and provincial levels and functions under the direction of the national government as well as the nine provincial governments. The security branch and the riot police, two of the most controversial branches of the SAP, have been replaced with two specialist national units for intelligence and public order policing. An Independent Complaints Directorate (ICD) and a system of Community Police Forums and Boards have been established as the chief accountability mechanisms.

17 In terms of section 214(1).

18 Which includes the Minister of Safety & Security.

19 To this end a National Standards and Management Services Division has been established.

### ***Police Accountability Mechanisms***

Until recently civilian oversight of the police and effective accountability mechanisms simply did not exist (Weitzer & Repetti, 1991). To backtrack a little: in 1992 a permanent judicial commission on the prevention of violence and intimidation was established.<sup>20</sup> This publicly transparent inquiry operated under wide terms of reference and was accorded full powers of investigation and subpoena. Although this Commission was set up to investigate political violence, it exposed many abuses perpetrated by the SAP, provided valuable insight into the role played by the police in perpetuating the political conflict and "... increased the quality of external surveillance over the police and other arms of the security establishment" (Scharf, 1994[b]:2).

A complaints mechanism established under the National Peace Accord was also operative from late 1991 onwards. This comprised a system of Police Investigation Units and civilian Police Reporting Officers.<sup>21</sup> Unfortunately, however, this mechanism proved to be generally ineffective at bringing guilty officers to book (The Network of Independent Monitors *et al*, 1995; Scharf, 1994[b]). Two of the main reasons cited for this inefficacy were the limited powers accorded civilian overseers and the fact that investigatory mechanisms were not sufficiently independent of the police. In June 1995 the Police Reporting Officer for the Witwatersrand released a condemnatory report claiming that the system of civilian oversight was a failure because high-ranking police officers, supported by the AG, consistently blocked overseers access to vital evidence. He underscored the gravity of the issue stating that:

"... the problem of police misconduct is huge and is in my view the single most important factor contributing to the level of crime in SA" (Advocate Munnik quoted in: The Weekend Argus, 2-3 September 1995).

Despite the failure of the National Peace Accord police accountability mechanism, the lessons learned were used to inform the development of the ICD, the permanent complaints mechanism which has now been established in terms of the 1995 SAPS Act. According to this legislation the ICDs two principal functions are to investigate, *mero motu* or on receipt of a complaint, misconduct or offences allegedly committed by police and all deaths resulting from police action as well as those that occur in police custody.<sup>22</sup> Heated debate over optimal structure and functioning preceded, and has followed, the establishment of the ICD. Operational and financial independence seem to have been the main concerns (e.g. The Network

20 Popularly known as the Goldstone Commission.

21 Eleven police investigation units were operational by the end of 1992 (The Commissioner of the SAP, 1993).

22 It may also investigate any matter referred by the Minister or other member of the Executive Committee.

of Independent monitors *et al*, 1995; The Weekend Argus, 2-3 September 1995; The Sunday Times, 8 August 1995; Scharf, 1994[a], 1994[b]). This matter has been addressed in numerous ways throughout the Act: it is stated explicitly that the ICD shall function independently from the SAPS and that "all organs of state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the directorate in the exercise and performance of its powers and functions". Furthermore, the executive head of the ICD has been accorded quite substantial powers to investigate, and the Minister of Safety and Security is required to consult with the parliamentary committees in appointing or removing this head. Notably, the ICD is funded directly by parliament and not via the Secretariat.

One of the serious remaining concerns is the fact that the investigatory arm of the ICD is dominated by police officers, despite deliberate efforts to appoint civilian staff. This is due to scarcity of skilled investigators outside of the police force. Although it is hoped that the civilian component of the ICD will act as a watchdog with respect to the police investigatory component, such a composition is vulnerable to the well-known shortcomings of police investigations of police. Overall a great deal of critical evaluation and planning has gone into the development of the ICD and even at this early stage its impact is being systematically evaluated (Bruce, 23 July 1997).<sup>23</sup>

The SAPS Act makes provision for another type of accountability mechanism: a liaison system between civilians and police comprising Community Police Forums and Boards. The legislated aims of these structures are to: (1) establish and maintain a partnership between the community and the police, (2) encourage communication, (3) promote co-operation in fulfilling the policing needs of the community, (4) improve the rendering of police services, (5) enhance the transparency and accountability of the SAPS, and (6) promote the joint identification and solving of problems. Importantly, the SAPS appears to be operating in a more transparent manner than the SAP and it is now generally easier to obtain information about police in this country. The prohibition on officers speaking to the press has been lifted, the SAPS makes regular informative public statements, and previously secret information is being made available (e.g. Van Wyk, 1995). Furthermore, police interest in research and co-operation with non-police researchers has improved markedly.

### ***A New Discourse of Police-Work***

The leadership of the SAPS has recognised that transforming police subculture and the managerial climate within which it operates are urgent imperatives (Van Wyk, 1995; The Chief of SAP Efficiency Services, 1993). Perhaps the most visible



intervention in this regard has been the formal adoption of a new discourse of police-work, termed community-supported policing.<sup>24</sup> Indeed the new name and legislated objectives of the SAPS clearly reflect the most basic premises of this approach. To elaborate: the police force has been renamed a police *service* and the following aims have been set down in the Preamble to the Act: (1) to ensure the safety and security of all persons and property in the country, (2) to uphold and safe-guard the constitutional rights of every person, (3) to ensure co-operation between the SAPS and the communities it serves in combating crime, (4) to show respect for, and understanding of, the needs of crime victims, and (5) to ensure effective civilian supervision of the SAPS.

### ***Personnel-Related Changes***

Many of the SAP officers who perpetrated atrocities during the reign of the Apartheid State have been revealed and removed from the SAPS.<sup>25</sup> In general, however, members of the erstwhile SAP have not been prosecuted for abuses committed during the civil war. The key approach has been to publicly expose, learn from past 'mistakes' and then let bygones be bygones, which is exemplified by the Truth and Reconciliation Commission.

The staff composition of the SAPS has been overhauled and, to some extent, undesirable elements have been purged. From 1993 top police leadership was effectively replaced; SAP generals were encouraged to retire and new, mainly black generals were appointed. The 1994 election brought a new police Minister, National Commissioner and nine Provincial Commissioners. In addition, the SAPS has made a formal commitment to eliminate the longstanding over-representation of white males, especially in top positions. By implementing equal opportunity and affirmative action policies, the SAPS hopes to develop a police service that is more representative of the broader population (Van Wyk, 1995). Discrimination against police personnel on the grounds of sex and race has been prohibited by regulation. Thus far females, particularly in higher ranks, have remained under-represented within the SAPS. By contrast, the numbers of black officers have been boosted at all levels of the police service. This was largely a result of the amalgamation in 1995 of the SAP and the 10 predominantly African police forces of the old TBVC states and self-governing territories.

Specific efforts have been directed at eliminating Apartheid mentality from the SAPS. All aspects of the service have been racially integrated and anti-racism training has been introduced. A range of interventions have been aimed at demilitarising and depoliticising the police. A more civilian-style rank system, akin to that used in Britain, and a less militaristic police uniform are being introduced

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24 This is the context in which other SAPS reforms must be understood.

25 Especially those who were involved in torture and assassinations.

(Van Wyk, 1995). Under the SAPS Act, police officers are now prohibited from holding office in political organisations, publicly expressing or displaying their political affiliations, or furthering or prejudicing party-political interests.<sup>26</sup> It is also noteworthy that conduct sheets now have to be maintained with respect to every police officer in the SAPS. This is promising as it implies the systematic monitoring of police conduct.

### ***Police Training and Re-education***

The dire importance of effective retraining has been acknowledged within the SAPS, especially since 11 police agencies, each with differing approaches and methods, have been merged. A comprehensive assessment of police training programmes has been undertaken by an interdisciplinary team of experts (Van Wyk, 1995). One of the criticisms that has emerged is that police training has been too theoretical and legalistic in orientation, with insufficient emphasis on experiential learning in realistic conditions (The Chief of SAP Efficiency Services, 1993). Furthermore, too little attention has been paid to key issues such as human rights, race relations, cultural sensitivity and skills like negotiation, consultation and conflict management. In 1995, 1800 police recruits underwent a pilot training programme, the overall aims of which were to demilitarise police attitudes, instill respect for human rights and orient officers toward the new community-style of policing. The efficacy of this pilot programme has been evaluated and used in the development a retraining programme for the entire SAPS (Van Wyk, 1995).

### ***Improving Weapons and Equipment for Law Enforcement***

Contrary to expert opinion, paramilitary weapons have remained part of the SAPS arsenal and have not been expressly prohibited from use in routine police-work. Indeed the R1 assault rifle, which was withdrawn due to its extreme lethality and high risk to bystanders, has been replaced with the R5 combat rifle. Similarly, the use of ostensibly non-lethal weapons with high fatality rates have not been rejected. For instance, rubber bullets were still being used to manage public protests at the end of 1996 (The Mail & Guardian, 6-13 December 1996). There has also been no indication from the SAPS that the issue of less-than-lethal equipment and tactics is being given the serious attention it requires.

By contrast, officer safety is currently being treated as a priority within the SAPS and the rate of police homicides is said to have declined since 1994 (Van Wyk, 1995). Over the past few years the police have purchased large quantities of new generation body armour.<sup>27</sup> Although this increase in availability is a step in the

26 However, they are permitted to attend political meetings, belong to political organisations and vote.

27 In 1993 the total was 13755 complete sets and 3690 outer garments (The Commissioner of the SAP, 1993:10).

right direction, creative efforts may be necessary to encourage routine wearing by police in this hot climate.

The recognition by police management of the negative impact of stress on officer performance constitutes another promising development in the arena of officer safety. Police supervisors are being trained to identify symptoms of stress and to make appropriate referrals. Officers who have been involved in violent interactions with civilians are now being routinely referred for counselling. Significantly, the Centre for Academic and Research Psychology is investigating ways of preventing suicides among police (The Commissioner of the SAP, 1993).

Finally, the mobile forensic laboratory is a rather impressive recent addition to police equipment. A number of these laboratories have been introduced since early 1995 as a means of improving the quality of police investigations in outlying rural areas (The Cape Times, 16 February 1995). This appears to be part of the SAPS commitment to improving the quality of police investigations in general.

### ***Relevant Changes to the Legal System***

The entire South African legal system is being overhauled and hopefully these reforms will improve the quality of justice rendered by the Courts in this country. Whilst the scale of reforms is too large to discuss here, interventions that are changing the pool of adjudicators in criminal trials are worth noting. For instance: lay assessors are being used increasingly to assist magistrates and judges, steps have been taken to modify the composition of the bench,<sup>28</sup> and the practice of appointing magistrates from the ranks of prosecutors is to be altered.<sup>29</sup> In short, these kinds of changes may help to address two key aspects of the 'gun problem': inconsistency in the application of the law, and Courts' customary lenience in the treatment of police officers.

### ***Interim Evaluative Comments***

Since many of these reforms are still in flux or have been introduced only recently, a conclusive evaluation of their impact is not feasible. Nevertheless, a number of preliminary assessments of the initial impact of some police reforms have already been conducted and remaining problems identified. Relevant findings from two of the most thorough published assessments available have been briefly discussed here, namely, those of the Network of Independent Monitors *et al* (1995) and the Confronting Crime Workshop (Lochrenberg & Stanton, 1995).

The Network of Independent Monitors (NIM) *et al* (1995) investigated allegations of human rights violations by police between 1990 and 1995. Their main

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28 For example, fusing the bar has increased the number of black lawyers who will be eligible for appointment to the judiciary in the longer term.

29 Since prosecutors work very closely with police, this is likely to decrease magisterial lenience toward officers.

conclusion was that although "powerful, symbolic steps in the right direction" had been taken in transforming the SAPS, some serious problems had not been adequately addressed (1995:47). Most worrying was the fact that the government had failed to take the crucial first step of publicly acknowledging that routine abuses of power by police, including the use of excessive force, were not a thing of the past. Additional interventions were recommended to address the main residual problems including inter alia: (1) the establishment of a National Task Force on Human Rights and Policing to propose and monitor the implementation of interventions aimed at preventing unnecessary deaths and the use of torture by police, (2) the addition to the SAPS Act of a new police code of practice based on the United Nations' Basic Principles (1990),<sup>30</sup> (3) the provision of specific training for police, prosecutors and judicial officers with respect to the new police code of practice, (4) the introduction of a law specifically prohibiting torture, (5) and another obligating police to report misconduct by their colleagues, (6) law reform to enable greater command responsibility with the SAPS, and (7) a nationwide audit, by the Safety and Security Secretariat, of individual officers and police units allegedly involved in the repeated use of excessive force. Notably, the NIM report also underscored improvements to internal police disciplinary mechanisms as imperative, and proposed: increased transparency through civilian representation and regular public reports, as well as automatic suspension for officers accused of serious misconduct pending the outcome of investigations, and dismissal for those convicted of serious human rights violations.

The community-supported approach to policing was one of the key issues to receive attention at the Confronting Crime Workshop. This conference was an unprecedented event that involved dialogue among representatives from non-government organisations, specialist academics, international experts and key officials from the new government. The participants generally agreed that, although community-supported policing showed great promise, the necessary paradigm shift had not been uniformly achieved throughout the SAPS. And as a consequence, the application of this new policing style had been fragmented. It was pointed out that the formal adoption of policy was just the first step and that specific interventions and sustained effort were necessary to modify established police practices. Indeed the resilience to change of cop culture in the South African context was not unexpected (e.g. Brogden, 1991; Jeffery, 1991; Rauch, 1991). In the words of Jeffery, "[c]hanging deep-rooted attitudes and prejudices is not an easy task especially when these have consistently been reinforced by 43 years of apartheid policing" (1991:174). It seemed that more direct means of changing cop culture were required, e.g. introducing a significant number of officers who operate

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30 Thus making it legally enforceable.

according to the new culture, to act as change agents.<sup>31</sup> However, it was not just the rank-and-file who constituted the problem at this stage (the second half of 1995). Elements of the SAPS leadership and the managerial climate also remained problematic. To illustrate: in his refusal of a request by the Provincial Cabinet for the temporary suspension of 29 detectives, who were charged with murder and torture, the Gauteng Commissioner of Police explained that:

"[t]he SAPS has already gained enormous credibility in the community with a new constitutional approach and it is therefore not necessary to suspend or dismiss members" (The Sunday Times, 9 July 1995).

## **WHAT REMAINS TO BE DONE?**

### **Maintaining Perspective**

A high and rising rate of intentional firearm homicide was the primary gun-related problem revealed by this study. From the mid-eighties the incidence of gun homicide increased, making guns *the* leading cause of firearm death in Cape Town. The upward trend in gun homicide was not only characteristic of this one city, but of the RSA as a whole. The national rate even surpassed that of the USA, a country known for its unacceptably high rate of firearm homicide. Nonetheless, in mapping guns as a social problem it is crucial not to lose sight of the fact that contemporary South Africa is a violent society in which most people have been killed by weapons other than guns. In Cape Town many more homicide victims have died from stab-wounds rather than gunshots. Even in KwaZulu-Natal, a region renowned as a killing field, the majority (60%) of the homicides committed in recent years have been perpetrated with weapons other than firearms (The SAPS in: The Weekly Mail & Guardian, 4 April 1996).<sup>32</sup> Furthermore, this is a country in which the vast majority of people tend to die from so-called natural causes, many of which are related to poverty and inequality (The MRC, 1995; The CSS, 1993; Wilson & Ramphela, 1989). It is thus important that firearms be kept in perspective as one of many factors that may contribute to heightened violence. Efforts to reduce gun-related violence must be balanced with those aimed at diminishing other forms of violence, as part of a larger peace initiative.

Worldwide, strategies for reducing gun-related violence have generally been limited to criminal law and the criminal justice system, and interventions aimed at changing variables like poverty and unemployment have been noticeably uncommon (Kleck, 1986). Yet it is relative economic inequality -- mediated by race -- that has been established as a key determinant of elevated rates of homicide in the USA (e.g. Huff-Corzine *et al*, 1991; Baron & Straus, 1988). This is also a plausible explanation for the high rate of homicide in South Africa where much of the ongoing

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31 See Brogden (1991) on this culturalist approach.

32 On average between 1991 and 1995.

violence is among black people who were disadvantaged under Apartheid and are now vying to acquire political and socio-economic advantages within the new dispensation. If a sustainable reduction in the overall level of violence is to be achieved, it is vital to address the structural factors that fuel social conflict and violence. Indeed, "the reduction of inequality and exploitation is probably the most effective single means of decreasing conflict and violence in the long term" (Hansson, 1990[a]:110). Many initiatives introduced in the RSA since 1991 have embraced this kind of objective. Major changes have been made to enable political equality: the Apartheid State has been replaced with a democratically elected government and a new Constitution has been introduced which outlaws most forms of discrimination.<sup>33</sup> Although socio-economic equality is a more elusive goal, upgrading the living standards of the majority has been adopted as a state priority and massive amounts of resources are being poured into this endeavour, most visibly by way of the Reconstruction and Development Programme (RDP). In the context of such large scale and concerted efforts to address fundamental social problems, smaller scale initiatives like those proposed here would seem to have better prospects for success.

### **Why Not Ban Handguns?**

In view of the generalised misuse of handguns revealed by this study, outlawing private ownership might seem appropriate.<sup>34</sup> However, this approach is contra-indicated once empirical evidence on the impact of this kind of intervention and the current sociopolitical context of South Africa are taken into account. The reasons are many and varied: first, such a prohibition is aimed at disarming civilians, so neglects police and PSOs who have been shown to constitute a significant aspect of the 'gun problem'. Secondly, since legislated gun controls do not prevent illegal possession and often serve to boost the black market, removing licensed guns may serve to increase the relative power of armed lawbreakers, as was the case in Nigeria. Thirdly, there is likely to be significant opposition to a handgun ban in this country at present. Black people have only just been afforded equal access to legal gun ownership. This is a frontier society in which there is an established tradition of private gun ownership and an entrenched belief in the right to be armed. Fear of violence is high and public confidence in the institutions of collective security is low. Legal and illegal gun possession is prevalent and has increased in the post-election years. Any talk of outlawing private gun ownership may well boost the acquisition of firearms, as has been the case in many countries. Fourthly, the results of various voluntary hand-ins implemented since 1991 have been disappointing; clearly reflecting strong public opposition to giving up privately owned firearms (e.g. The

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33 With a Bill of Rights.

34 As Canada, Australia and Britain have done in recent years.

GFSA Campaign, 1995). Low levels of voluntary compliance would mean enormous effort by police to enforce a handgun ban and this seems unlikely because the SAPS is already stretched.<sup>35</sup> Most countries that have outlawed handguns have boosted compliance by offering firearm owners financial compensation. In Britain in September 1997, for instance, the going rate was around 150 pounds for each handgun surrendered, with a total bill in the region of 150 million pounds (The Mail on Sunday, 24 August 1997). At this stage South Africa simply could not afford such an expense. Fifthly, outlawing handguns may result in a number of negative side effects, such as: the substitution of long-guns, especially those with shortened barrels which are more deadly than handguns, and displacement to more vulnerable robbery targets (Kleck, 1986[a]). Finally, even if licensed civilian gun owners were to be successfully disarmed, this might not significantly reduce overall rates of violent crime, for there are more fundamental factors fueling crime and violence in this country.

In the contemporary milieu, legislative initiatives aimed at disarming the populace appear to be unrealistic and may even serve to provoke violence. As it appears likely that this society will remain armed, both legally and illegally, at least in the foreseeable future, the issue of gun use is of added importance. Hence, the management of gun use has been proposed as the focus of gun-related policy in South Africa in the short to medium term (Hansson, 1996).

### **Guiding Objective**

This research showed that, in Cape Town between the mid-eighties and early nineties, licensed and unlicensed guns were used with a marked lack of restraint by all kinds of shooters (police, PSOs and civilians), in various situations (overtly political and everyday circumstances, public order policing and general law enforcement) and for different purposes (lawful and criminal). Notably, even licensed guns that were employed lawfully were used too readily and the result was an unnecessary loss of life. It is thus proposed that decreasing the rate of firearm fatalities and injuries be adopted as the overarching objective in addressing guns as a social problem in contemporary South Africa.

To reiterate: violence is perpetrated by people and not by guns, hence policy ought to be aimed at managing people rather than controlling guns. Death and injury resulting from the use of firearms have been afforded priority in this study. Since these are consequences of shots being fired, gun use constitutes the rudimentary problem. More specifically, the frequency with which shots are fired must be decreased in order to reduce unnecessary deaths and injuries from firearms. Of course, crime in which guns are present but not fired may also constitute a problem.

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35 And still undergoing major transformation, so is not yet functioning optimally.

But these research data, being limited to fatalities, were not informative in this regard.

### **Multiple Problems, Multiple Interventions**

This study identified a range of problems in relation to the fatal use of firearms. Gun suicides, accidents and homicides were problematic in different respects, as were some of the problems associated with law enforcers as opposed to civilian gun users. Nevertheless, intentional gun homicides constituted the biggest part of the firearm problem and, more specifically, a lack of restraint in the use of guns in justifiable homicides.<sup>36</sup> Hence the primary aim of intervention with respect to this issue must be to increase the restraint with which guns are used lawfully. Research has shown that numerous factors contribute to the excessive use of force in this country (summarised in Table 10.5), and this points to the need for a multifaceted intervention strategy.

In the USA, restraint in the use of firearms by police has been effectively increased without jeopardising the safety of officers and in spite of heightened violence among civilians. Furthermore, the number of unnecessary fatal police shootings has been significantly reduced without compromising the efficacy of law enforcement. This very commendable outcome has been achieved mainly by using a combination of rule tightening, the provision of less-than-lethal alternatives, and training in officer safety and violence reduction techniques (Geller & Scott, 1992).<sup>37</sup> These basic elements were thus given priority in the firearm strategy proposed here for law enforcement and licensed civilian gun users in South Africa.

Although the police have been recognised as key targets for intervention, the objective of increasing restraint in gun use has not been limited to this group. According to these research results, licensed civilian gun owners and PSOs were also important target-groups for intervention.<sup>38</sup> Indeed the number of private law enforcement officials has continued to rise and because PSOs are routinely armed with guns it is imperative that this group be included in efforts to increase restraint in the use of deadly force (The Ministry of Safety & Security *et al*, 1995).

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36 Problems associated with criminal homicides have been discussed subsequently.

37 Based mainly on the Scharf-Binder and Graves-Connor models discussed in Chapter Four.

38 Illegal gun owners have been considered subsequently.



**Table 10.5: Summary of Key Factors Contributing to Lack of Restraint in Gun Use, South Africa.**

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- \* Macro factors that fuel social conflict, especially relative economic inequality and racial discrimination.
  - \* A 'climate of fear' among civilians and law enforcers spawned by the civil war over Apartheid.
  - \* Racism on the part of the police.
  - \* A hostile relationship between police and civilians.
  - \* A lack of equipment for improving officer safety, especially soft body armour (SBA).
  - \* An established police subculture and a managerial climate supportive of excessive force.
  - \* A 'macho subculture' among men which encourages the use of force over 'softer' options, attack rather than withdrawal and the taking of unnecessary risks.
  - \* A 'culture of violence' among civilians which condones violence as a first resort in dealing with conflict.
  - \* Few less-than-lethal alternatives available.
  - \* Lethal use of weapons intended to be non-lethal, especially non-live ammunition.
  - \* Defective police techniques of arrest and restraint which increase the probability of resistance to arrest and attempted escapes.
  - \* Dangerous police tactics like firing at moving vehicles.
  - \* Problematic police practices like the obligation to intervene and the carrying of service firearms when off duty.
  - \* Inappropriate policing of political protest under Apartheid.
  - \* Shortcomings in police standing orders and law governing the use of deadly force, particularly:
    - inadequate emphasis on restraint in the use of deadly force;
    - inconsistencies in the standard of proportionality required in different defences;
    - insufficient weight accorded the right to life, especially in arrest;
    - indemnity for those who create the need to use deadly force;
    - the incremental use of force not explicitly required.
  - \* Ineffective independent oversight of police.
  - \* Deficient police investigations and a low quality of evidence in fatal shootings.
  - \* A high proportion of undetermined shootings and many shooters who perpetrate unlawful homicides not tried for killing.
  - \* A reliance on less-thorough informal inquest proceedings to decide lawfulness in most fatal shootings.
  - \* Inconsistent and lax application of legal requirements on the use of deadly force, especially by inquest courts.
  - \* Prosecutors reticent to charge police officers.
  - \* Lenient treatment by the Courts of police officers responsible for fatal shootings.
  - \* Insufficient empirical data and inadequate monitoring and data sources.
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*Sources:* Chapters Three, Five and the findings from this investigation.

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## Law Reform

A serious defect in the South African law governing the use of deadly force has been inconsistent minimum force and proportionality requirements for different grounds of justification. Many aspects of the law violate the defence-of-life standard: the most conspicuous being the provisions that justified deadly force in the defence of property, the dispersal of public gatherings at which property was being damaged, and the arrest or prevention of escape of suspects who did not pose an immediate threat to life. This study showed that 75% (281) of the people who were killed justifiably could have been spared without jeopardising the lives of others.<sup>39</sup> Indeed in a substantial 61% (229) of these cases shooters posed at least as great a threat to life as their victims, since they foreseeably endangered innocent third parties by shooting. Overall, killing for purposes other than defending life resulted in a significant number of unnecessary deaths, for which shooters were not generally held criminally liable. Arrests were especially problematic in this respect because they involved a high proportion of unnecessary killings of black people who were not dangerous, were fleeing, and were suspected of relatively minor offences like car theft. Here it is noteworthy to recall that the proportion of black suspects fatally shot by the North American police declined substantially following the introduction of a minimum legal standard for arrest (Geller & Scott, 1992).

South Africa has only recently been permitted to rejoin the United Nations after many years of exclusion due to Apartheid. The country also now has a bill of rights and a constitution based on internationally accepted notions of human rights. In order to ensure a consistent standard of proportionality in keeping with the spirit of human rights, it is recommended that defence-of-life be adopted as the sole legal standard for justifying the intentional use of deadly force in South Africa.<sup>40</sup> More specifically, the existing law must be amended to this effect and new legislation introduced reflecting the following key principles:

"[firearms shall not be used against persons] ... except in self defence or defence of others against the *imminent threat of death or serious injury* [emphasis added], to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting authority or to prevent his or her escape, and [then] only when less extreme means are insufficient to achieve these objectives.<sup>41</sup> In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" (Section 9 of The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990).<sup>42</sup>

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39 And 50% (180) of those who were lawfully killed were unlikely to have been a future danger to anyone.

40 Leaving the defence of unintentional or accidental killing intact.

41 Section 14 of the Code specifies that this defence-of-life standard be applied to the dispersal of unlawful and lawful public gatherings.

42 Hereafter abbreviated as: The UN Basic Principles.

To clarify: although these principles refer specifically to the use of firearms by law enforcement officials, the suggestion here is that they be applied in South Africa to the use of all forms of deadly force by civilians, police and PSOs.

Since one of the key goals of intervention in this arena is to promote increasing restraint in the application of means capable of killing or seriously injuring people,<sup>43</sup> it is essential that the principles of minimum force and the incremental application of force be explicated as fundamental requirements of the defence-of-life justification. It is also recommended that the following two provisos be included in this new defence: not foreseeably and unnecessarily (1) creating the need to use deadly force, and (2) endangering any third party by using deadly force. The intention here is to exclude those who violate either of these conditions from the legal protection of this justification. The main advantage of having one relatively simple justification for the intentional use of deadly force is ease of recollection and application, which is important considering the stressful conditions in which these decisions must usually be made. Such a provision may also facilitate a stricter and more consistent assessment of cases by the Courts.

Although the extra-ordinary legal powers that were afforded the security forces during the political conflict have been revoked,<sup>44</sup> it would seem advisable to adopt the following clause in South African law as a preventative measure:

"[e]xceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles [including the defence-of-life standard] (Section 8 of The UN Basic Principles, 1990).

In recent years overwhelming evidence of extreme abuse, perpetrated by the police under orders from senior SAP officers during the civil war, has been exposed in testimony delivered to the Truth and Reconciliation Commission and in various criminal trials such as that of the Vlakplaas commanding officer Eugene De Kock. Not only has this raised awareness of the potential for abuse of power by police, it has highlighted a serious shortcoming in the law: commanding officers have not been held sufficiently accountable for the consequences of their orders. To rectify this deficiency in legal accountability it is suggested that section 24 of the UN Basic Principles be used to draft a new provision:

"[s]uperior officers [must be] held responsible, if they know, or should have known, that law enforcement officials under their command, are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use".

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43 See Section 2 of the UN Basic Principles (1990).

44 See Burchill and Milton (1994).

In sum, this is an attempt to shift the goal posts by reformulating the boundaries of what is deemed to be acceptable conduct in the use of deadly force. The main aim is to further restrict the circumstances under which killing is legally justified.

### **Modifying Regulations**

In general, changing administrative police regulations has been more effective at improving restraint in the use of deadly force by officers than legislative reform (Geller & Scott, 1992). In South Africa these regulations, known as the Police Standing Orders, have been heavily criticised on various grounds including a failure to stress restraint in the use of force, minimum force, incremental use and proportionality. Indeed these orders have tended to impose very few absolute obligations on the police (Network of Independent Monitors *et al*, 1995).<sup>45</sup> Some of these deficiencies have been rectified in the revised arrest provisions that were issued in late 1996 and others are still in the reform process. But the continued reliance on *predicted* dangerousness in assessing proportionality -- using suspected offences as predictors of immediate and future dangerousness -- is particularly problematic. It does not even measure up to the protection-of-life standard because, in theory, it permits the use of deadly force against people who are not currently violent and who are not likely to be dangerous in the future.<sup>46</sup>

Civilian gun users have not had the benefit of explicit regulations to guide their deadly force decisions. They have had to rely on the law which has been somewhat inconsistent, complicated and ambiguous (Hansson, 1990). Because people tend to use firearms in highly stressful, often life threatening circumstances, it is important that gun owners be familiar with appropriate conduct before they find themselves in a potentially violent confrontation. It is thus recommended that a new set of regulations on the use of firearms (and deadly force in general) be devised and implemented in South Africa. In effect, these would function as a code of conduct and would be applicable to civilians, police, PSOs and other law enforcement officials. It is important that these regulations apply to the use of deadly force and not just firearms because civilians more often use knives to kill, and the majority (53%) of homicides committed by police are not shootings (The MRC, 1995; Bruce, 23 July 1997 resp). Furthermore, the code should be straightforward, practical, in keeping with the relevant law and should emphasise restraint (for example, see Table 10.6).

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45 See Chapter Five for details.

46 See Table 10.4.

**Table 10.6: Guidelines for Regulations on Deadly Force including Gun Use.<sup>47</sup>****Preamble**

Deadly force is any kind of force reasonably capable of causing serious injury or death, the most common being the use of guns and knives. The overall objective of these regulations is to limit the use of deadly force to the defence of life and to promote increased restraint in the use of force in general: in short, to encourage the safe diffusion of conflict.

**1. Aim to Defend Life**

- 1.1 You may only intentionally use deadly force to defend yourself or someone else against an imminent threat of death or serious injury.
- 1.2 You may only use deadly force to defend life when strictly unavoidable, because less extreme methods are not feasible in the circumstances or have already been used unsuccessfully.
- 1.3 You must not foreseeably create the need to use deadly force. In particular, refrain from placing yourself in danger or taking unnecessary risks: think safety first.<sup>48</sup> And remember that sometimes it is better for all concerned if you withdraw.
- 1.4 Avoid unnecessarily endangering anyone other than the person intended.

**2. Use Minimum Force**

You must use the least force possible to effectively defend life.

**3. Use Force Incrementally**

- 3.1 You must start with non-violent methods, like persuasion and withdrawal, whenever feasible.
- 3.2 You must use force only if non-violent methods prove unsuccessful. Then, whenever feasible, use less-than-lethal force, like physical control tactics, mace and stun guns.
- 3.3 You must use deadly force only if the use of less-than-lethal force proves unsuccessful.
- 3.4 If you are a law enforcement officer, whenever feasible and before using force, you must identify yourself and tell the person concerned that s/he is under arrest (if appropriate). Do this loudly so that s/he is able to hear you and if possible speak in a language you think s/he is likely to understand.

<sup>47</sup> Based on The United Nations Basic Principles (1990). This is a second draft; see Hansson (1996) for the first version.

<sup>48</sup> If available, the wearing of soft body armour by law enforcement officers should be stressed.

#### **4. When Deadly Force is Envisaged:**

- 4.1 Do not draw a gun unless shooting is justified, necessary and unavoidable.
- 4.2 Do not fire at or from a moving vehicle.
- 4.3 Whenever feasible, you must give the person concerned verbal warning that you intend to use deadly force against him/her, e.g. "Stop or I'll shoot". Do this loudly so that s/he is able to hear you and if possible speak in a language you think s/he is likely to understand.<sup>49</sup>
- 4.4 If the person does not comply with your verbal warning within a reasonable period and still constitutes a significant threat to life, then you should fire one shot at his/her legs if feasible.

#### **5. When Deadly Force is Used:**

- 5.1 You must avoid unnecessarily endangering anyone other than the person who constitutes the threat.
- 5.2 If you actually injure anyone, you must make sure the police are notified and an ambulance is called to the scene as soon as possible.<sup>50</sup>
- 5.3 If anyone at the scene is qualified and willing to render first aid, this should be done promptly.

### **Improving Equipment**

Providing less-than-lethal alternatives is vital if the use of guns is to be decreased, especially among law enforcers. Yet traditionally, little use has been made of such weapons in this country. The South African police and private security industry need to follow the example of North American police agencies that have selected reliable less-than-lethal equipment by regularly and systematically assessing the efficacy and suitability of available alternatives in context. Greater investment also needs to be made in the development of new types of less-than-lethal equipment.

Considering the widespread fear and insecurity that permeates this society, it is critical to improve people's sense of personal safety. After all, a fearful person with a gun may well prove trigger happy. Since the election the police force and the legal system have been extensively reformed and, in time, this will hopefully serve to improve public confidence in the institutions of collective security. It may also help to stem the current upward spiral in the defensive acquisition of guns. The police have been particular targets for violence during the political conflict and a climate of fear still permeates the police service, which increases the likelihood of gun use (The

49 Note that warning shots have been excluded because these can endanger innocent third parties and be used by police to cover-up unacceptable shootings. See Chapter Four.

50 Police control must be notified immediately, even when the perpetrator is a police officer.

Network of independent monitors *et al*, 1995). Today, as both police and PSOs face a heightened risk of violence and are more likely to use firearms in their role as law enforcers, enhancing their safety is imperative. In the USA, the wearing of new generation soft body armour has proven to be a most effective means of lowering the police fatality rate from gunshots and enhancing officers' sense of safety.<sup>51</sup> In recent years, the SAPS do appear to have begun introducing a type of SBA. This process must be boosted so that SBA becomes a routinely available piece of equipment that is regularly worn by police and PSOs.

### **Training, Re-Education and related Legal Changes**

The way in which force is used has much to do with attitudes and perceptions of available options, hence emphasis has been placed on retraining people to enhance their safety and employ greater restraint while providing them with a wider range of alternatives to deadly force. Recent legal reform has made it necessary for gun licence applicants to be certified by a recognised body as competent to possess a firearm. For civilians, including PSOs, this generally involves completing and passing a certified instruction course at a registered gun club; the police have their own firearms training. This requirement has made preparatory training a valuable mechanism for changing gun use among licensees. But at this early stage the content and quality of this training needs to be improved and standardised.

As was discussed at some length in Chapter Four, police training programmes -- based on a combination of the Scharf-Binder sequential decision-making model, the Graves-Connor use-of-force-options model and officer safety training -- have proven highly effective at improving the safe use of restraint by police in the USA. In short, these training models aim to re-orient officers to the alternate goal of safely diffusing violence by teaching them a range of less-than-lethal tactics and an approach that stresses expanding the options for dealing with confrontations from the outset (Fridell & Binder, 1992; Scharf & Binder 1983). Significantly, the efficacy of this kind of training depends largely on the simulation of conditions similar to those in which decisions to use deadly force are likely to be made. It is thus recommended that firearm training programmes of this ilk be developed and used as the standard competency training in this country. Since law enforcement officers are likely to find themselves in dangerous situations more frequently than the average civilian, however, it is suggested that two types of training programme be developed; one tailored to the needs of law enforcement officers and one to civilians. Considering the problem of inadequate restraint in firearm use by police, PSOs and civilians that was revealed in this study, it is proposed that all current licence holders be required to undergo the new competency training within a certain period.<sup>52</sup>

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51 The latest variant of SBA is also resistant to sharp instruments.

52 Including PSOs and police.

A standard competency test ought to be developed as a complement to the proposed training in order to assess: (1) knowledge of the law and regulations on the use of deadly force, (2) adequate knowledge of safe-keeping and safe-handling of firearms and ammunition, (3) ability to correctly apply knowledge of firearms in a range of likely circumstances, (4) skill at safely and appropriately handling and using a gun under simulated realistic conditions,<sup>53</sup> and (5) weapon retention and bullet placement skills. Before a certificate of competence is granted, the device in which an applicant intends to keep his/her firearm should be inspected to assess whether it accords with the required standards for safe-keeping.

At present, a gun licence remains valid until the holder permanently transfers or forfeits ownership. It is recommended alternatively that the law be amended to make gun licences valid for a maximum of five years and/or until 60 years of age. This reform implies regular retesting of gun owners for competency in order to retain licences.

#### **Further Legal Restrictions on Ownership**

The thrust of the strategy discussed thus far has been to make training in restraint a prerequisite for legal gun ownership so that only those who are properly trained are legally permitted to possess guns. Since the following legal provisions are likely to seriously undermine the success of this endeavour they require reform. Firstly, the section that permits an unlicensed person, who is usually not properly trained, to borrow a gun with the permission of a licensed owner, ought to be abolished. This provision has already been used by street gangsters on the Cape Flats as a loophole to acquire guns for illegal use (The Ministry of Safety & Security, 1995). Similarly, temporary possession of a gun under the supervision of a licensed holder should be disallowed, except under the direct supervision of a registered firearms instructor for the purpose of competency training and provided that the unlicensed person is at least 18 years of age.

In South Africa, people are permitted to vote and to hold a driver's licence from the age of 18 years. It is believed that by this age people have usually developed the moral responsibility and rational decision-making capacity necessary to make proper use of such options. Since using a firearm requires at least as much skill as driving a car, it is contended that the minimum age for acquiring a gun licence should be increased from 16 to at least 18 years.

Of late there has been growing dissension over the legal provision that permits licensed civilians to possess multiple firearms and large quantities of ammunition (e.g. Jagwanth & Thipanyane, 1993; Hansson, 1990[a]).<sup>54</sup> Like other work, this

53 Similar to the components of a driving test.

54 At present one must legally possess the firearm capable of firing the ammunition in question and quantity is limited to 100 rounds for certain firearms.



study suggested that the presence of guns in the home is associated with increased risk of suicide, accidents and homicides among residents and friends. It is thus proposed that the Act be amended so as to restrict lawful possession to a single handgun per adult and sufficient ammunition for the said gun to enable self defence. This limit is justifiable on the grounds that the majority of civilians claim to own guns for protection and handguns are the most appropriate firearm for this purpose. Persons who wish to legally possess long-guns, more than one handgun or more than the standard quota of ammunition, must be required to furnish proof that the said items are essential for their work or sporting activities, or that they are bona fide collectors of firearms. It is important that such instances should be treated as *exceptions* to the rule.

**Table 10.7: Additional Interventions re SAPS and PSOs.**

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- \* Regular reviews of training programmes and operational procedures, particularly in the light of actual incidents in which force or deadly force has been employed.
  - \* Emphasis in training on: ethics and human rights, strategies for the peaceful settlement of conflicts, methods of persuasion, negotiation and mediation, and tactics for immobilising rather than killing violent suspects.
  - \* Regular testing of officers' proficiency in the proper use of force (with failure resulting in suspension from active duty).
  - \* Commitment to the development of non-violent, less-than-lethal law enforcement tactics and equipment, and means for improving the safety of officers.
  - \* Routine equipping and regular training in the proper use of non-violent, less-than-lethal and safety techniques and equipment;
  - \* Prohibit officers from possessing service firearms when off duty.
  - \* Outlaw the practice of firing at or from a moving vehicle.
  - \* Stop arming law enforcement officers with assault weapons, especially for riot control. Limit use to specialist police units for specific purposes like dealing with hostage situations.
  - \* Stop arming officers with ammunition that causes unwarranted injury and/or presents additional risk to bystanders.
  - \* Stop arming officers with non-live ammunition.<sup>55</sup>
  - \* Disarm and limit to office tasks any officer who kills or injures anyone while on-duty, until the lawfulness of his/her conduct has been decided.
  - \* Routinely refer officers involved in violent incidents for evaluation and stress counselling.<sup>56</sup>
  - \* Maintain conduct sheets for every PSO and regularly submit these to an independent committee for examination and feedback.<sup>57</sup>

Source: The United Nations (1990).

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55 As it routinely causes death and officers tend to use it with less restraint believing it to be non-lethal.

56 This is already being done to some extent within the SAPS.

57 The SAPS already requires the keeping of conduct sheets for police officers.

To facilitate the assessment of gun licence applicants it is suggested that a confidential computer database be kept of psychiatric patients with a history of violent behaviour and those at significant risk of suicide.<sup>58</sup> Although this is likely to be contentious, applicants for gun licences are already required to have their fingerprints taken and to divulge any previous psychiatric history. The proposed reform would only involve granting a designated authority permission to check this information.

### **Improving Police Investigations and Evidence**

The current government has recognised the longstanding lack of co-operation between the public and the police as a serious obstacle to effective policing. To this end, the SAPS has been restructured with an eye to establishing greater racial representivity and reducing racism. Community-police forums have been set up where issues can be regularly discussed. Efforts are being made to change from a militaristic repressive approach to a service-oriented community style of policing (Jagwanth, 1994; The Chief of SAP Efficiency Services, 1993; Rauch, 1991). It is hoped that such interventions will gradually facilitate public co-operation with the police, so enhancing *inter alia* the quality of investigations.

It is also vital that the police improve their investigatory efforts. This study and more recent national research have underscored shortcomings in police investigations as a key problem with serious ramifications within the criminal justice system. The following unacceptable routine practices in police inquiries have been revealed: inadequate managing of crime scenes leading to the destruction of evidence, failing to reconstruct scenes in order to test the feasibility of statements, neglecting to have alleged shooters tested for residual gunpowder and other relevant ballistics tests, making little effort to trace and take statements from material witnesses (The Network of Independent Monitors *et al*, 1995).

Apart from the need for direct interventions to remedy the specific problems, these findings underscore the importance of bolstering the independence of mechanisms for investigating abuses within the SAPS. The new Independent Complaints Directorate (ICD) is the primary mechanism in this regard. In terms of the SAPS Act (1995) the ICD *shall* investigate "any death in police custody or as a result of police action", and police commissioners are required to notify the ICD of all such deaths.<sup>59</sup> The ICD may also investigate any misconduct or offence allegedly committed by police or any matter referred by the Minister or Executive Council. Although numerous steps have been taken to boost the independence of this Directorate, the bulk of those who conduct the investigations are still police officers.

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58 Criminal records are currently being computerised.

59 See Bruce (Forthcoming) for a critique of this requirement.

This requires careful monitoring.

Whilst the automatic referral and inspection of police deaths by the ICD is certainly a positive development, an addition to this process is indicated. In developing use-of-force policy for the police, it is not enough to take only killings into account. The following aspects also require routine examination: (1) all shots fired by police, (2) averted shootings, and (3) averted force incidents in which police manage to diffuse potentially violent encounters *without* using force.<sup>60</sup> Since there are already concerns about the ICD being overloaded, it is recommended that the Secretariat for Safety and Security, which is tasked with policy development, take on this function. Cases involving deaths could be passed on to the Secretariat from the ICD and those involving injuries and missed shots could be identified from police logs of shots fired. However, the Secretariat would need to devise a procedure for locating averted force incidents for consideration.

There has been a growing sense of frustration within the police force since the 1994 elections. Many of the old-guard view the treatment of suspects under the new dispensation as ineffectively lax, and this may encourage police to dispense their own versions of street-justice (The Network of Independent Monitors *et al*, 1995). Systematic monitoring is a vital aspect of controlling the police use of force. Importantly, it enables prompt intervention when force is used inappropriately. To assist in monitoring the use-of-force by police officers, conduct sheets should include *inter alia*: details of assignments, data identifying the service firearm/s, ammunition, less-than-lethal weapons and equipment issued, details of incidents in which the officer has fired shots, complaints made against the officer, injuries suffered in the line-of-duty and regular assessments of the officer's use of restraint in general, and less-than-lethal and non-violent tactics in particular.<sup>61</sup>

Since the police have a reputation for compromising investigations, reforms designed to increase the impartiality of investigations would seem appropriate. It is thus recommended that responsibility for state mortuaries, and hence autopsies, be transferred from the SAPS to the Ministry of Health (The Network of Independent Monitors *et al*, 1995).<sup>62</sup> This reform may serve to improve the image of the SAPS, free up police officers for other duties, enhance the quality of some of the primary physical evidence and decrease the chance of police interference with initial evidence.

It is important not to lose sight of the fact that it is not only the investigation of deaths and injuries *caused* by police which is inadequate. In general evidence provided by police has a pivotal impact on Court decisions. Inquest courts must have evidence sufficient to decide the lawfulness of a death on a balance of probabilities, while criminal courts require more evidence to enable a decision

60 See Chapter Four.

61 See Geller and Scott (1992) for further suggestions.

62 As in the UK.

beyond a reasonable doubt. Thus, limited or inadequate evidence in relation to a fatal shooting leaves a Court with little chance of making an unlawful finding. This was the trend which emerged from the study at hand: where there was little evidence the Courts were usually unable to decide the lawfulness of a shooting. In this research there was also a high incidence of cases in which the only statements were from the shooters themselves and the Courts tended to find these fatal shootings lawful.<sup>63</sup> Generally speaking a Court requires more evidence to make an unlawful finding. Thus, when faced with only a shooter's justification for a homicide, the likelihood of a lawful or undetermined finding is increased. It is recommended therefore, that police training in investigative procedures emphasise the importance of actively seeking and recording information pertaining to restraint. A checklist of the required restraints could be devised to assist police in the collection of such evidence.

The quality of evidence has a crucial effect at many junctures in the legal process including inter alia: the finding of the Inquest Court, the decision of whether to prosecute, the probability of conviction and the severity of the sentence. To elaborate, a prosecutor bases his/her decision to try a case on the chances of a successful conviction. Cases in which the evidence is deficient are thus unlikely to be prosecuted. This could explain the high proportion of fatal shootings in this study that were not brought to trial despite being found unlawful at inquest. To conclude, the quality of police investigations and evidence must be improved if there is to be a sustainable increase in restraint in the use of deadly force. It would be fruitless to introduce more stringent legal criteria for justifying the use of deadly force if deficiencies in evidence effectively prevented prosecutors and Courts from identifying and penalising those who failed to employ adequate restraint. Succinctly put, the police are arguably the primary link in this chain of intervention.

### **Enhancing Adjudication**

Whilst law reform is often necessary to facilitate change, without routine application it can have little impact. Indeed inconsistent implementation has been identified as a prime impediment to the efficacy of gun control in South Africa (e.g. Hansson, 1996; 1990[a]; Zazera, 1973). This study showed that Inquest Courts did not consistently or strictly apply the legal requirements regarding restraint in the use of deadly force. Hence, gun users who killed and failed to employ the stipulated legal restraints were rarely criminally sanctioned. Therefore, it is recommended that judicial officers and prosecutors be trained with regard to any new legal requirements. It is hoped that such training, when combined with more stringent legal requirements and better evidence, will encourage a more rigorous application of the law and an increased certainty of punishment for those who use deadly force

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63 This was particularly common in police shootings.

without due restraint (Hansson, 1996).

This study showed, in accordance with previous findings, that the vast majority of fatal shootings were adjudicated at *informal* inquests. Hence, lawfulness was decided out of the public eye and on documentary evidence alone, without oral evidence or the cross-examination of witnesses to test credibility. The need to implement the following longstanding recommendation remains: formal inquests in all homicidal shootings not tried in criminal courts. The basic aim is to upgrade adjudication and increase transparency in fatal shootings.

### **What about Illegal Users?**

Thus far, emphasis has been placed on changing the conduct of *licensed* gun owners. Legal owners were targeted for intervention because this was the largest group of firearm users in the study, and inadequate restraint in gun use was the key problem within this group. Although illegal gun owners also constituted a problem in terms of restraint, they were not accessible to the compulsory training initiatives suggested here. Hence, this group has to be approached by other means including macro-level reforms, public education and criminal sanction. In short, some of those who use unlicensed guns to commit crimes will be penalised within the criminal justice system, along with some of those who break the law using licensed firearms.

### **Levels of Intervention**

Under the new dispensation, government has been restructured in a way that devolves previously centralised government to provincial and local levels. There are significant regional variations in political dynamics and associated patterns of violence. For instance: in the Western Cape much violence has been related to the so-called taxi-wars and street gangs, while in Gauteng, train shootings, hostel-related violence and carjackings have been more common, and KwaZulu-Natal has been dominated by political conflict between the IFP and the ANC. Regionally, and even locally, specific firearm policies are necessary adjuncts to national policies if the needs of different jurisdiction are to be addressed.

### **Co-ordinating Body**

Considering the range of suggested interventions and the complex and dynamic nature of gun-related problems, it would seem prudent to establish a body to develop an overall plan of action, to systematically implement the necessary changes, to conduct ongoing impact evaluation and to develop future policy.<sup>64</sup> Furthermore, the rapidly changing sociopolitical circumstances make up-to-date monitoring of the

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64 Comprising inter alia representatives from: the Ministries of Justice, Safety and Security, Health and Welfare, the offices of the AG, and the civil sector, particularly gun owners' associations, the GFSA Campaign and those with expertise in public health and policy evaluation.

situation critically important. Shifts in the dynamics of violence must be identified promptly and responded to appropriately. Given the country's limited resources and the serious consequences of gun-related violence, it is also essential that policy be constantly evaluated and improved using regular feedback on the impact of interventions. The legacy of a lack of public confidence in government, the legal system and the police force in South Africa has made the transparency of state agencies and public accountability compelling goals. Therefore the nature, aims and impact of new gun policy should be widely publicised. Notably, sustained public pressure has been identified as a central ingredient in successful violence reduction initiatives among North American police. It would thus seem important to foster such pressure for change in the South African context.

### **Developing the Data**

In view of the paucity of empirical work on gun use and possession in the RSA it is important that systematic research in this field be encouraged. The following are some examples of important topics: (1) characteristics of licensed and unlicensed gun owners, (2) circumstances in which civilians, police and PSOs fire shots, (3) injuries resulting from firearms, (4) potentially violent encounters in which shootings are averted, (5) the impact of specific interventions, (6) the effects of different kinds of restraints on rates of death and injury, and (7) the efficacy of different less-than-lethal equipment and tactics.

Accurate and sustainable sources of empirical data are vital to enable systematic monitoring, evaluation and policy development in this field. Reliable information is necessary to identify and prioritise problems, to design more appropriate interventions, to allocate resources and to monitor change (Hansson, 1990[a]; Stenning & Moyer, 1981). Data relevant to firearms have been relatively scarce in South Africa and a permanent computerised database designed to inform gun-related issues is urgently required.<sup>65</sup> The RDP has recently recognised the problem posed by the poor quality of national vital statistics in this country and is currently supporting the development of a National Health Information System as a foundation for health-related policy making. Mortality data have been emphasised as crucial components of this system, to elaborate, "[i]nformation on violence and injury, and their health impacts, should form the foundation of a multi-sectorial collaboration to create a 'safe and healthy' community" (The MRC, 1995:ii). In view of the complementary goals, it is suggested that the proposed gun-related database be developed as part of the National Health Information System.<sup>66</sup>

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65 Ideally linked from local to national levels.

66 Once computerised the CFR could be linked.

**A Closing Thought**

Fostering people's sense of safety and confidence in the institutions of collective security, and educating the public are crucial to achieving attitudinal and behavioural change in relation to violence and guns in South Africa. But the ultimate objective must be to build a culture of disarmament and peace, in which people will no longer feel it necessary to have or to use guns; a society in which the social order is not precariously dependent on the majority being armed and dangerous to one another.

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### **PERSONAL COMMUNICATIONS & NOTICES**

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University of Cape Town

**APPENDIX A:****New and Modified Variables.**

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- \* Year in which shooting occurred.
  - \* Place in which shooting occurred.
  - \* Whether shootings were politically motivated.
  - \* Victims' and shooters' age-groups.
  - \* Whether victims and shooters were gainfully employed.
  - \* Whether victims were civilians, police officers or private security officers.
  - \* Ranks held by police victims and shooters.
  - \* Number of entry-wounds sustained by victims.
  - \* Characteristics of victims' and shooters' guns.
  - \* Shooters' motives.
  - \* Whether shooters informed victims when their intention was to arrest.
  - \* The direction in which warning shots were fired.
  - \* Types of less-than-lethal means.
  - \* Whether victims threatened anyone and in what way/s.
  - \* Whether victims directly endangered life and in what way/s.
  - \* Whether victims were likely to have posed a significant current or future threat to life if they had not been shot.
  - \* Whether shooters foreseeably endangered any third party by shooting.
  - \* Whether victims were fleeing when shot.
  - \* Whether victims were suspects or convicts, and the nature of their most serious offence.
  - \* The type of criminal court in which trials were heard.
  - \* Whether shooters were charged.
  - \* Whether shooters were prosecuted.
  - \* Whether shooters were convicted.
  - \* Whether convicted shooters appealed and the outcomes.
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